

**THE CITY OF BOULDER
CITY COUNCIL MEETING
COUNCIL CHAMBERS, 1777 Broadway
February 3, 2015**

**The 2015 State of the City will be
Broadcast at 5:30 PM**

**The regular City Council Meeting will begin at
6 PM**

1. CALL TO ORDER AND ROLL CALL

A. A declaration expressing appreciation for collaboration on and contributions to the City of Boulder's Efforts to Secure Trash and Protect Black Bears

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE (Limited to 45 minutes.)

Public may address any city business for which a public hearing is not scheduled later in the meeting (this includes the consent agenda and first readings). After all public hearings have taken place; any remaining speakers will be allowed to address council. All speakers are limited to three minutes.

3. CONSENT AGENDA (to include first reading of ordinances) Vote to be taken on the motion at this time. Roll call vote required.

A. Consideration of a motion to approve the City Council **Meeting Minutes from November 18, 2014**

B. Consideration of a motion to accept the **January 13, 2015 study session summary on Financial Update**

C. Consideration of a **motion to accept the Upper Boulder Slough Floodplain Mapping Study update**, submit the study to FEMA, and direct staff to consider and use the study results in the regulation of all annexations and development proposals during the interim period in which FEMA is reviewing the study results.

D. Consideration of a **motion to call a Special City Council Meeting for an executive session on Thursday, February 12, 2015 at 6 PM.**

E. Consideration of a motion to adopt **Resolution No. 1154** authorizing the City Manager to enter into the **Trust Agreement for the Colorado Firefighter Health and Circulatory Benefits Trust** and setting forth related details

F. Introduction, first reading and consideration of a motion to order published by title only **Ordinance No. 8029 designating** the building and property at **747 12th St.**, to

be **known as the Cowgill Property**, as an **individual landmark** under the city's Historic Preservation Ordinance.

Owner/Applicant: 747 Twelfth Street, LLC

- G. Consideration of **a motion authorizing** the City Manager to enter into **a settlement agreement in the litigation** brought against the City by Danielle Gower and Carol Stimmel.

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.

5. **PUBLIC HEARINGS**

- A. Consideration of a motion to **approve the purchase of 5 acres of land** and all mineral rights **located at 38474 Boulder Canyon Dr.** from the Bonnie L. Schnell Revocable Trust for \$400,000 **for Open Space and Mountain Parks purposes** and an additional \$20,000 is recommended to be authorized from the acquisition budget for the potential deconstruction and recycling of the existing house. Consideration of **a motion to recommend that this parcel be included as part of the Western Mountain Parks Habitat Conservation Area.**
- B. **Second reading** and consideration of a motion to order published, by title only, and adopt **Ordinance No. 8015** amending Chapter 6-4, B.R.C. 1981, **adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” including electronic smoking devices** in the definition of smoking, and setting forth related details; **or in the alternative**, consideration of a motion to order published, by title only, and adopt **Ordinance No. 8017** amending Chapter 6-4, B.R.C. 1981, **adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,”** and setting forth related details.

6. **MATTERS FROM CITY MANAGER**

- A. Consideration of a motion to **authorize** the City Manager to enter into a **Memorandum of Understanding (MOU)** between the **Central Area General Improvement District (CAGID)** and **Trinity Lutheran Church** of Boulder, Colorado, **regarding the feasibility of a public/private partnership for parking** at the Trinity Commons project in downtown Boulder.
- B. Discussion and direction on **development-related impact fees and excise taxes.**
- C. Update on **P&DS Advisors Group**

7. **MATTERS FROM CITY ATTORNEY**

None

8. **MATTERS FROM MAYOR AND MEMBERS**

A. Call Ups

B. Consideration of a motion to **approve the process for performance evaluations and salary adjustments** for the City Manager, City Attorney and Municipal Judge.

C. Appointment of two council members to the Housing Strategy Process sub-committee.

9. **PUBLIC COMMENT ON MATTERS** (15 minutes)

Public comment on any motions made under Matters.

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

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

12. **ADJOURNMENT**

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If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three business 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 negocios días antes de la junta.*

Electronic presentations to the city council must be pre-loaded by staff and will not be accepted after 3:30 p.m. the day of a regularly scheduled council meeting. Electronic media must come on a prepared USB jump (flash/thumb) drive.

**CITY COUNCIL PROCEEDINGS
CITY OF BOULDER
November 18, 2014**

1. CALL TO ORDER AND ROLL CALL

Mayor Appelbaum called the November 18, 2014 City Council meeting to order at 5:36 PM in Council Chambers.

Those present were: Mayor Appelbaum and Council Members Jones, Karakehian, Morzel, Plass, and Weaver. Council Member Shoemaker joined the meeting at 6:27 PM.

Council Members Cowles and Young were absent.

Mayor Appelbaum advised the audience that the smoking ban issue on the consent agenda was for first reading – a process to place it on the calendar for a public hearing at the January 20 council meeting. People may address this item in Open Comment but Council would not be discussing the matter at this meeting.

A. Colorado Companies to Watch

Mayor Appelbaum presented declarations to twelve Boulder companies who have been recognized by the Governor as “Companies to Watch” for 2013 and 2014.

Jennifer Pinsonneault, Business Liaison with Economic Vitality, expanded on the award winners. The competition was for second stage companies that have gone beyond the start-up phase and are now into the growth phase of development. Chosen from thousands of applications received state-wide, this is a highly competitive award that looks at innovation, community involvement and company culture.

2013 Winners

Doc Popcorn
Isonas Inc.
Green Garage
Minute Key Inc.
Quick Left Inc.
Populus LLC

2014 Winners

Stratom Inc.
Connect First Inc.
Gravity Renewables
JustRight Surgical LLC
TeamSnap
eGauge Systems LLC

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE

A. Greg Wilkerson – Expressed concern regarding climate change and the lack of solar panels on new construction; he encouraged population

control, was opposed to the use of natural gas for heating, requested council to require use of geothermal and solar by 2030 and to ban natural gas use.

- B.** Barry Satlow – Representing the ACLU of Boulder County. Noted the ACLU had several concerns regarding executive sessions: (1) no provision to retain records, (2) requires 100% agreement of council members to release executive session recordings. The ACLU believes these recordings should be released when the executive sessions end in 2017. In adopting the Colorado State Retention Schedule, the period of retention for DVDs and CDs is six months and executive session recordings are 90 days. The ACLU urged Council not to rush this process and consider unintended consequences of adopting the State Retention Schedule.
- C.** Kathleen Motylenski – Representing the South Boulder Creek Action Group. The September 2013 flood devastated the SE section of the city. It caused emotional and financial damage and there is significant potential for a bigger flood to occur. Residents encouraged council to pursue upstream mitigation of South Boulder Creek to help prevent overtopping of US36 in future events.
- D.** Rob Smoke – Objected to the Mayor reducing speaking time in Open Comment from three minutes to two minutes at meetings in September and October when there were less than 15 speakers.
- E.** Jeffrey Peacock – Representing the Goss Grove Neighborhood Association (co-chair). The group had concerns including: flood mitigations, density, commercial growth along Canyon Blvd. and the civic build out; in particular about the water path thorough for flooding, which would affect their area.
- F.** Steve Karakitsios – Representing the South Boulder Action Group. Encouraged by mitigation efforts but requested Council to review the process for counting the number of people impacted by flooding. Water crests US36 about every decade, Council should not wait for the next event to happen before action is taken.
- G.** Carl Norby – Expressed Fraser Meadows residents concerns regarding post flood solutions. He expressed frustration with the lack of response from council and the city. He acknowledged their incredible workload and hoped that addressing problems before they escalated would reduce that workload. He requested a response from Council as to what they could do to engage council members in discussion and would appreciate their advice.

Mayor Appelbaum advised him that there would potentially be a response at the end of Open Comment.

- H. Vlad Nepustil – Had a complaint regarding management of the sewer system during The Flood. He stated that when Waste Management could not handle the flood waters, it was decided to back up the system, which then sent sewage into the basement of homes. For four days after The Flood, raw sewage was running down the streets. At first he believed it was just the result of a major disaster but then heard that Waste Management was proud they did not release sewage into the creeks and had decided to use the basements of homes to hold the overflow. He hoped asked for a policy change for the future.
- I. Shawn Coleman – For clarity wanted to make sure everyone understood he was not there representing NORML. He presented information updating Council on status of cannabis and addressed regulatory issues unique to Boulder: (1) sunset provisions to convert licenses, (2) grandfather provisions are linked to the license and not the site, and (3) co-location. He stated these are serious competitive issues affecting the ability to conduct normal business. Asked Council to address all issues in December as these issues were time sensitive.
- J. Deborah Ordway – She wanted to thank to City for all the efforts during the flood and other events. She gave council a book sharing the praises to the City with artwork and stories from community members.
- K. Susan Iott – Goss Grove resident who spoke to Planning issues, specifically density and flood plain management. She stated the Planning Board had recently approved new building in the flood plain and that the CU area has also had many buildings approved that will be in the flood plain. She stated the City has acknowledged that the most successful preparation for a flood was the Boulder Creek flood plain. Rather than following this example they were following FEMA guidelines to not increase the conveyance zone by 6” and this would put many lives at risk. She does not oppose density but stated there is no definition of what is too dense. She recommended that the City state goals and limits to density and clearly define the criteria for when exemptions would be issued. She recommended that as the City develops future plans it needs to include: (1) green space natural areas, (2) the Civic Area is good but not sufficient for the future number of people who will be using it and (3) widen the natural areas around the flood plain to prevent future damage.

Response from the City Manager

The City Manager reviewed staff efforts regarding the South Boulder Creek issue from the September study session where concerns from

Council and Boards & Commissions were raised about the environmental impact of flood waters contained in a targeted area on the south side of US36. She noted that staff was working with the City's consultant – CH2MHill – to look at other options with less environmental impacts. They were evaluating a concept to shift mitigation to the CU South property and hoped to have the concept ready to bring forward to CU and the public in early December. Staff would be working over the next year with CU and the Water Resources Advisory Board to vet that option.

Comments from City Council Members

Council Member Weaver encouraged Carl Norby to keep doing what he was doing, noting that there was not enough time during Council meetings to have a big dialog about these matters. He assured him that staff was moving as fast as it could.

The Mayor Pro Tem reassured speakers that Council heard their input and agreed with Council Member Weaver comments.

Council Member Morzel added that it was important to come and speak to council; not only for Council but for the community. Clearly the City Manager was listening and is having staff look into the issues. She commented that Emails were also a good way to reach council and that many council members would be willing to meet with them.

The Mayor commented that the speaker who stated staff caused the sewer backup was incorrect. It was caused by the massive amount of water infiltrating the system, which was overwhelmed, and the number of sump pumps illegally connected to the sewer system. The staff miraculously kept the water treatment center working.

Council Member Weaver thanked Deborah Ordway for the scrap book about the flood.

Council Member Morzel acknowledged Speaker Barry Satlow's concerns and said she would bring up some of his comments later in the meeting (the item was on the Consent Agenda).

Council Member Appelbaum moved, seconded by the Council Member Jones to amend the agenda by adding an item under Matters from the City Attorney, 7A - Discussion of Executive Sessions, and adding two items under Matters from Members of Council, 8E - to allow the Mayor Pro Tem to testify before a commission on fracking and 8F - for Council to discuss joining as amicus to an appeals court case. The motion carried 7:0 with Cowles and Young absent. The vote was taken at 6:30 PM.

Council Member Morzel advised Council that she also planned on speaking to the commission regarding fracking. The Mayor requested she let Council know when so it could be sanctioned.

3. **CONSENT AGENDA** (to include first reading of ordinances) Vote to be taken on the motion at this time. Roll Call vote required
 - A. **CONSIDERATION OF A MOTION TO APPROVE THE CITY COUNCIL MEETING MINUTES FROM OCTOBER 21, 2014**
 - B. **CONSIDERATION OF A MOTION TO ACCEPT THE SEPTEMBER 30, 2014 STUDY SESSION SUMMARY ON FLOOD MANAGEMENT**
 - C. **CONSIDERATION OF A MOTION TO ACCEPT THE OCTOBER 14, 2014 JOINT PLANNING BOARD/CITY COUNCIL STUDY SESSION SUMMARY ON PLANNING ISSUES AND THE BOULDER VALLEY COMPREHENSIVE PLAN**

Council Member Morzel requested the minutes for the October 14 Joint Planning Board/City Council study session summary be amended to include:

“City Council and Planning Board members discussed sub-committees (or committees) during the study session. Several council members and Planning Board members spoke to their support to the possible formation of board sub-committees to address an issue, be it policy or just a practical matter, if that particular board felt a need to address. That could result in some policy or other recommendations to the council. There was also discussion by some council members that they were not aware of when these issues arose for the particular board but would like to be informed and would like the board to be able to take appropriate steps that would allow the board to perform its functions better.

- D. **CONSIDERATION OF A MOTION TO ACCEPT THE LOWER BEAR CANYON CREEK FLOODPLAIN MAPPING STUDY UPDATE, SUBMIT THE STUDY TO FEMA AND DIRECT STAFF TO CONSIDER AND USE THE STUDY RESULTS IN THE REGULATION OF ALL ANNEXATIONS AND DEVELOPMENT PROPOSALS DURING THE INTERIM PERIOD IN WHICH FEMA IS REVIEWING THE STUDY RESULTS.**
- E. **CONSIDERATION OF A MOTION TO ADOPT EMERGENCY ORDINANCE NO. 8013 ADOPTING SUPPLEMENT NO. 121, WHICH CODIFIES PREVIOUS ADOPTED ORDINANCE NO. 7981, APPENDIX COUNCIL PROCEDURE, AND OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS, AS AN AMENDMENT TO THE B. R. C., 1981**

Council Member Morzel requested that staff provide information to her about whether electric fencing was allowed to cross a creek that runs through a private property. This issue came up during the flood.

F. SECOND READING AND CONSIDERATION OF ORDINANCE NO. 8011 AMENDING CHAPTER 2-2, B.R.C. 1981 BY THE ADDITION OF A NEW SECTION 2-2-19, "RECORDS RETENTION;" ADOPTING THE COLORADO STATE RECORDS RETENTION SCHEDULE AND REPEALING ORDINANCE NOS. 5753, 5879 AND 5972

Records Manager Elesha Johnson addressed Council on adoption of the State retention schedule. First, a Records Management Liaison Committee would be formed and, after training, an inventory would be completed. No items would be destroyed without the approval of the Director and the City Manager. Council would be kept apprised of the progress. The City must justify a request for exceptions to the retention schedule to the State for approval.

Council requested that the City Manager bring this topic back for discussion within six months prior to the initial purging of documents.

Retention of executive session recordings will be addressed at the December 2 Council Meeting.

G. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, ORDINANCE NO. 8014 APPROVING SUPPLEMENTAL APPROPRIATIONS TO THE 2014 BUDGET.

H. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, ORDINANCES NOS. 8015 AND 8017 EACH AMENDING CHAPTER 6-4, B.R.C. 1981, ADDING A NEW SECTION 6-4-3.5 "SMOKING PROHIBITED IN PUBLIC PLACES," WITH ORDINANCE NO. 8015 INCLUDING ELECTRONIC SMOKING DEVICES IN THE DEFINITION OF SMOKING, AND ORDINANCE NO. 8017 NOT INCLUDING ELECTRONIC SMOKING DEVICES IN THE DEFINITION OF SMOKING AND SETTING FORTH RELATED DETAILS.

Revised to include two alternative motions: (1) including electronic smoking devices in the definition of smoking and (2) not including electronic smoking devices in the definition of smoking.

I. INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, ORDINANCE NO. 8016 AMENDING CHAPTER 4-11, MALL PERMITS AND LEASES," SECTIONS 4-1-9 "AUTHORITY TO DENY ISSUANCE OF LICENSES," 4-20-11 "MALL LICENSE AND PERMIT FEES," AND 8-6-6 "REQUIREMENTS FOR

REVOCABLE PERMITS, SHORT-TERM LEASES AND LONG-TERM LEASES,” B.R.C. 1981, TO UPDATE THE CODE TO BE CONSISTENT WITH CURRENT MALL PRACTICES AND NEEDS, AND SETTING FORTH RELATED DETAILS

Council Member Jones moved, seconded by Council Member Morzel, to approve Consent Agenda Items 3A through 3I as amended. The motion carried 7:0 with Council Members Cowles and Young absent. Vote was taken at 6:52 PM.

4. POTENTIAL CALL-UP CHECK IN

Interest was expressed in calling up Item 8A-1, the Concept Plan Review application for the redevelopment of a six acre site located at 3000 Pearl Parkway; 2100, 2170 30th and 2120 32nd Streets also known as the Reve Development

ORDER OF BUSINESS

5. PUBLIC HEARINGS

A. SECOND READING AND CONSIDERATION OF ORDINANCE NO. 8007 TO EXTEND THE PILOT PROJECT ALLOWING E-BIKE USE ON CERTAIN MULTI-USE PATHS BY REMOVING THE EXPIRATION DATE

Staff Presentation by Marni Ratzel, Senior Transportation Planner with GoBoulder.

As part of the Transportation Master Plan Update, the City piloted a Living Laboratory. In February, a pilot began that allowed e-bikes use on multi-use paths. At the same time, an evaluation of all users of the multi-use paths was initiated to evaluate whether e-bikes can co-exist with other users of this system. The pilot has a sunset provision of December 31, 2014.

Staff has evaluated quantitative and qualitative measures, including speed, volume of traffic, gender and who is riding or walking. Field observations in August at four different sites collecting seven hours of data. A key finding was that the pilot has not resulted in large numbers of e-bike users on multi-use paths. A successful etiquette campaign was launched called “Way of the Path” in cooperation with Community Cycle Bicycle Ambassadors. An intercept survey at four locations resulted in 126 responses with the majority approving e-bike use on multi-use paths.

TAB unanimously approved removing the sunset date on e-bike use on

multi-use paths and recommended the continuation of monitoring this use. The board also stated that if this increased use, there may need to be refinement to address any impacts.

Responding to 1st Reading questions from Council:

1. How is electric assisted bicycle use on open space lands being addressed?

This item would be coming forward to Council at a future meeting from the Open Space Board of Trustees.

2. What control mechanisms are permissible?

The City has adopted the State definition that allows a motor up to 750 watts whether it has a throttle or pedal.

3. Should we do additional outreach and education on the operation of electric-assisted bicycles?

Staff agreed that public outreach would be useful in the form of test rides or through the opportunity to learn more about e-bikes.

Staff supported the use of e-bikes on multi-use paths as a continued strategy toward increasing the mode share from 10% to 15% by 2020; ultimately to 30% by 2030, which is an objective of the Transportation Master Plan. E-bikes on multi-use paths would provide a complete transportation plan.

Next Steps

If the ordinance was approved by Council, it would become effective in 30 days. Staff would continue with the “Way of the Path” program and outreach to the public on the benefits of e-bikes. E-bikes would continue to be prohibited from Open Space and sidewalks (unless a sidewalk was designated for e-bike use).

Council Member Jones asked for clarity on removing the “sunset day.” Would this still be a pilot?

The City Attorney responded that by removing only the “sunset date” from the ordinance it would make this a permanent part of the code.

Council Member Jones asked for further explanation on (1) e-bikes with throttle assist and (2) the difference between regulations between the US and European countries.

Prior to the pilot project, the City had not adopted the State definition of

an e-bike. Upon reviewing how other states regulate this use, they ultimately adopted the State regulations: two parallel or tandem wheels, fully useable pedals, a maximum electric engine not larger than 750 watt of power and a top speed of 20 MPH. E-bikes manufacturing comes under Federal regulation that requires a regulator that will shut off when an E-Bike exceeds 20 MPH.

Council Member Weaver clarified that 750 watts equals one horse-power.

Council Member Morzel asked if e-bikes were easily identifiable and how someone unfamiliar with the City's multi-use paths would know where they could use an e-bike?

Ms. Ratzel responded that e-bikes were easily distinguished by the motor that generally resides in the hub of the wheel and further that maps of bike and pedestrian paths are available. Additional signage would also be considered.

Council Member Weaver asked if electric, throttle assisted children's scooters, are allowed on multi-use paths.

Ms. Ratzel responded that a scooter is a toy vehicle and also a motor vehicle and not allowed. Staff had purposefully precluded e-bikes only from the motor vehicle code.

The Mayor questioned how someone would know there was a 15 MPH speed limit, especially in a city with a large number of visitors?

Ms. Ratzel responded that the "Heads Up" program used pavement decals to advise users of the 8 MPH speed limit in crosswalks as a speed advisory and would consider more strategies to raise awareness.

There being no speakers to the issue, the Public Hearing was closed at 7:14 PM.

Council Member Weaver moved, seconded by Council Member Jones, to adopt Ordinance No. 8007, removing the sunset provision of Ordinance No. 7941 allowing e-bike use on certain multi-use paths. The motion carried 7:0, with Council Members Cowles and Young absent. Vote taken at 7:15 PM.

B. CONTINUED SECOND READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY ORDINANCE NO. 7957 AMENDING TITLE 2, “GOVERNMENT ADMINISTRATION,” CHAPTER 7, “CODE OF CONDUCT,” B.R.C. 1981 AND SETTING FORTH RELATED DETAILS

The presentation on this item was provided by City Attorney Carr. This was a continued 2nd reading from February 18 and addressed the expectations for behavior of council members and staff. One goal was to simplify the code making it more accessible and transparent. Another was to raise expectations of behavior. Previously, all violations of the code were criminal violations. A third goal was to decriminalize all but the most serious offenses, such as: misappropriation of government property or bribery, etc. The memo outlines and details all the changes and some examples that were given included:

- “Conflict of Interest” from relying on legal definition to using simple language.
- “Exercise of Discretion” was defined as “something in your power to make a decision.”
- “Discount as a Gift” if you are receiving the discount because you are in the position to take official action in their favor; an exemption to this would be if the discount is generally available to the public.
- “Remote Benefit” indicates no personal benefit received

One item needing action was the acceptance of sporting events/concert tickets provided by a non-profit or government entity that exceed \$50 in value. The staff recommendation was to allow one event a year for up to \$150 where the purpose was to promote the relationship between the city and the sponsor.

The change to the “Endorsement of Political Candidates or Issues” was expanded from just council members (using their title) supporting/opposing candidates or issues to include boards and commissions members allowed to use their title of the board they represent.

There being no speakers to the issue, the Public Hearing was closed at 7:42 PM.

Council Member Plass moved, seconded by Council Member Appelbaum to approve on second reading Ordinance No. 7957 amending Title 2, “Government Administration,” Chapter 7, “Code Of Conduct,” B.R.C.1981 and including amends made to “Benefits” to

include “family member” and “Disclosure” to include “if the official or employee has any authority to exercise discretion over the business relationship.” The motion carried 7:0, Council Member Cowles and Young absent. Vote was taken at 7:56 PM.

6. MATTERS FROM THE CITY MANAGER

A. REQUEST FOR COUNCIL DIRECTION REGARDING THE CITY’S PARTICIPATION IN THE SECURITIES EXCHANGE COMMISSION MUNICIPAL BOND COMPLIANCE INITIATIVE

The City Attorney and the Chief Financial Officer Bob Eiche (CFO) presented for staff. The City Attorney described the new MCDC efforts. Formed in March of 2014, this commission’s agenda allowed:

- The opportunity to admit to lack of disclosure within the last five years;
- Material failure to disclose
- If you voluntarily disclosed, they would not seek financial penalties.
- If they found you in violation, you would agree in advance to a “cease and desist” order without allowing for negotiations.

The Chief Financial Officer introduced Dee Wisor Butler from Snow LLP, Disclosure Council, who represents the buyers of the City’s municipal bonds. He reported on three disclosure issues:

- The city did not disclose to the market place when its bond rating was increased in 2009 from AA+ to AAA.
- The City did not update several tax revenue tables. The CFO staff corrected this in August 2014.
- City Bond Insurance rating downgrade was not disclosed.

If the SEC determined a finding of materiality (information a reasonable investor would use to make an investment decision) they could use enforcement action to try to prove their case. The financial risk to the City (if not participating in the initiative) would be a financial penalty (worst case had been \$20,000 plus defense fees). The City Attorney’s opinion was that it was too risky to give up the right to a defense.

Staff’s recommendation is that the City not participate in the SEC initiative.

7. MATTERS FROM THE CITY ATTORNEY

A. EXECUTIVE SESSION DISCUSSION

Council Member Appelbaum moved, seconded by Council Member Morzel to schedule a Special City Council Meeting to hold an executive session on Monday, December 8, at 6 PM and Wednesday, December 3, at 7:30 PM.

The final date will be determined by CAC after consulting Council Members Cowles and Young on availability.

8. MATTERS FROM MAYOR AND MEMBERS OF COUNCIL

A. Potential Call Ups

1. Potential Call-up and Concept Plan Review application for the redevelopment of a six acre site located at 3000 Pearl Parkway; 2100, 2170 30th and 2120 32nd Streets located within the Business Regional- 1 (BR-1) and Industrial General (IG) zoning districts. Last Opportunity for Call-up: 11/18/14

Council Member Weaver moved, seconded by Council Member Morzel to call up the concept review of the project at 30th and Pearl.

2. Landmark Alteration Certificate to construct a 1,282 sq. ft. addition to the main house, to relocate an existing garage on the property, and to construct a 330 sq. ft. one-car garage at 711 Pine St. in the Mapleton Hill Historic District, per section 9-11-18 of the Boulder Revised Code 1981 (HIS2014-00172). This Landmark Alteration Certificate is subject to City Council call-up no later than **November 18, 2014**.

No action taken on this item.

3. Landmark Alteration Certificate to construct a 308 sq. ft. garage at 2250 6th St. in the Mapleton Hill Historic District, per section 9-11-18 of the Boulder Revised Code 1981 (HIS2014-00309). This Landmark Alteration Certificate is subject to City Council call-up no later than **November 18, 2014**.

No action taken on this item.

4. Landmark Alteration Certificate to construct a 300 sq. ft. addition and 150 sq. ft. screened-in mechanical area at the Union Pacific Depot at 30th and Pearl St., and individual landmark, per section 9-11-18 of the Boulder Revised Code (HIS2014-00299). This Landmark Alteration Certificate is subject to City Council call-up no later than **November 18, 2014**.

No action taken on this item.

B. Election of Mayor Pro Tem

Mayor Appelbaum moved, seconded by Council Member Morzel, to postpone the election of the Mayor Pro Tem until December 2 when all nine council members will be present.

C. Nod of Five to prepare a declaration of appreciation for Senator Mark Udall

Council approved this request.

D. Appointment of subcommittee for Council employees salary review

Council Member Appelbaum moved, seconded by Council Member Jones to appoint Council Members Cowles and Shoemaker as a subcommittee for Council Employees Salary Review.

- E.** Council Member Jones and Council Member Morzel have been invited to testify before the State Oil and Gas Task Force. With two minutes each to speak, Council Member Jones would address the explicit authority of the City to control its land use, air pollution and public health issues. Council Member Morzel would include best practices based on scientific research. Council approved both members testifying before this task force with the understanding their remarks should reflect the approved Council Legislative Agenda.

- F.** The Mayor reported that the board of the Colorado Municipal League had unanimously voted to join and appear as “friend of the court” in the Longmont/Ft. Collins moratorium case. Council instructed the City Attorney, who will contact the City of Longmont and the City of Ft. Collins, to inquire if they would like the City of Boulder’s support by joining an appeal regarding the lawsuits against their moratoriums on drilling.

9. PUBLIC COMMENT ON MATTERS

There being no speakers, Public Comment was closed at 9:05 PM.

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

Vote was taken on the motion to not participate in the Securities Exchange Commission Municipal Bond compliance initiative. The motion carried 7:0, with Council Members Cowles and Young absent. Vote was taken at 9:05 PM.

Vote was taken on the motion to schedule a Special City Council Meeting to hold an executive session on Monday, December 8, at 6 PM and Wednesday, December 3, at 7:30 PM. The motion carried 7:0 with Council Members Cowles and Young absent. Vote was taken at 9:06 PM.

Vote was taken on the motion to call up the concept plan review of 30th and Pearl. The motion passed 7:0 with Council Members Cowles and Young absent. Vote taken at 9:10 PM.

The City Clerk will make available in the Council Office a set of the elevations for this site.

Vote was taken on the motion to postpone the election of the Mayor Pro Tem until December 2 when all nine council members will be present. The motion carried, 7:0 with Council Members Cowles and Young absent. Vote was taken at 9:11PM.

Vote was taken on the motion to appoint Council Members Cowles and Shoemaker as a sub-committee for Council Employees Salary Review. The motion passed 7:0 with Council Members Cowles and Young absent. Vote taken at 9:11 PM

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

Council Member Karakehian reminded staff that the project referred to as the Union Pacific Depot is by contract actually the Boulder Jaycee Depot. The City Manager confirmed that SAM had discussed this and all agreed the project is the Boulder Jaycee Depot and the correction would be made.

Council Member Weaver recommended council members attend next year's NewCo event (open houses of local businesses).

12. ADJOURNMENT

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED on November 18, 2014 at 9:13 PM.

Approved this 3rd day of February, 2015.

APPROVED BY:

Matthew Appelbaum
Mayor

ATTEST:

Alisa D. Lewis
City Clerk



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE

Consideration of a motion to accept the January 13, 2015 study session summary regarding 2014 financial update.

PRESENTERS

Jane S. Brautigam, City Manager
Bob Eichem, Chief Financial Officer

EXECUTIVE SUMMARY

This agenda item provides a summary of the January 13, 2015 City Council study session regarding financial update. The purpose of the study session was to provide an update to council regarding initial revenues and expenditures for 2014, the current financial outlook for 2015 for revenues and general economic conditions.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to accept the study session summary from January 13, 2015 financial update, included in this agenda item as **Attachment A**.

NEXT STEPS

Full financial update study session is scheduled for April 28, 2015.

ATTACHMENTS

- A.** Summary of the January 13, 2015 financial update study session

January 13, 2015
City Council Study Session Summary
Financial and Economic Update

PRESENT:

City Council: Council Members Appelbaum, Karakehian, Jones, Cowles, Morzel, Plass, Shoemaker, Weaver, and Young.

Staff Members: Jane Brautigam, City Manager; Bob Eichen, Chief Financial Officer.

PURPOSE:

The objective of this meeting was to provide a brief update on the financial position of the city and to present an overview of the economic conditions both locally and globally that could impact the City of Boulder during 2015.

PRESENTATION OVERVIEW:

Financial Update

Bob Eichen, Chief Financial Officer, provided a quick update on the preliminary 2014 results and where the City is headed for 2015.

The State of the Cities study from the Colorado Municipal League reported that many cities and towns are experiencing financial problems due to a shortfall in funding for transportation infrastructure. The City Council for Boulder proactively addressed this issue in the fall of 2013 by referring a ballot measure to the voters that was passed. The increased funding started January 1 of 2014.

Mr. Eichen stated that the city will meet its revenue projections for 2014, and it is expected that expenditures for all city funds will be within the budget. The formal audit will be completed by June 30, and we will have actual details at that time.

The Headwinds that that city is facing include larger percentage of income going for housing cost. This can result in people spending less on retail items. The international economy is posing uncertainty with the European economy on the brink of recession and the Japanese economy struggling to recover. An unknown wildcard is the impact of continuing breaches in online security. The tailwinds include low unemployment rates with a continuing downward trend. Low oil prices promote additional consumer buying. The economy in the past three months has been the best we have seen since 2003.

Sales tax revenue for the City for 2014 YTD 6.5% compared to the prior year. This is higher than the projected 3.11% growth. Revenues including recreational marijuana are 7.75% compared to the prior year.

The Comprehensive Financial Strategy will be on the council agenda in the next couple of months. There has been progress in closing the gap and the updated information will be part of the agenda item. The model being used for the update will allow staff to provide more frequent updates of the long range model.

Council member Young asked where the additional sales tax revenue collected in 2014 will go. Mr. Eichem stated that these amounts will be picked up during the budget process of 2016. Council member Morzel asked how excess 2013 revenue were used. Mr. Eichem stated that those amounts were picked up and reflected in the budget process of 2015, and have been used to fund one-time costs. Council member Karahehian noted that the city could have substantial revenue increases in 2014. Mr. Eichem noted that additional revenues will be picked up during the budget process for 2016 and revenues will be prioritized to reflect council priorities. The Long Range Planning will enable the city to ensure that the long range expenditures and revenues are sustainable. Mr. Eichem noted that 2015 was the first year we have had significant additional revenues to cover new ongoing costs. This was quite different than in years when very small amounts were available for new ongoing costs.

NEXT STEPS

- Full Financial Update is currently scheduled for April 28th , 2015



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE

Consideration of a motion to accept the Upper Boulder Slough Floodplain Mapping Study update, submit the study to FEMA, and direct staff to consider and use the study results in the regulation of all annexations and development proposals during the interim period in which FEMA is reviewing the study results.

PRESENTERS

Jane S. Brautigam, City Manager
Maureen Rait, Executive Director of Public Works
Jeff Arthur, Director of Public Works for Utilities
Bob Harberg, Principal Engineer - Utilities
Annie Noble, Flood and Greenways Engineering Coordinator
Katie Knapp, Engineering Project Manager

EXECUTIVE SUMMARY

The city has a comprehensive floodplain management program designed to identify flood risks, mitigate the risks of flooding, minimize loss of life and property damage, and support community recovery following a major flood. Floodplain mapping provides the basis for the city's floodplain management program by identifying the areas at the highest risk for flooding. Changes in land use, updated topographic mapping, and upgrades to hydrologic and hydraulic models warrant periodic mapping updates.

This memorandum provides information about a proposed floodplain mapping revision for the Boulder Slough. The Boulder Slough study will update the hydraulic models and flood hazard mapping for the reach of Boulder Slough between 30th and 18th streets, including two split-flow paths north of the slough and west of 26th Street. Modeling and mapping of this reach, as well as the split-flow paths, utilize 2013 Light Detection and Ranging (LiDAR)-based topographic data. The Boulder Slough downstream (east) of 30th Street will be studied as a separate effort, following the completion of the improvements that are currently under construction.

If adopted by the city and FEMA, the Boulder Slough floodplain mapping study will provide the regulatory basis for land use applications, building permit applications, and flood insurance requirements for properties located in the 100-year floodplain of the Boulder Slough.

STAFF RECOMMENDATION

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

Motion to accept the Upper Boulder Slough Floodplain Mapping Study update, submit the study to FEMA, and direct staff to consider and use the study results in the regulation of all annexations and development proposals during the interim period in which FEMA is reviewing the study results.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** Flood insurance is required for properties located in the 100-year floodplain if they are financed by a federally-backed mortgage. Flood insurance rates are set by FEMA based on the flood risk shown on the flood insurance rate maps. Accurate floodplain mapping helps facilitate accurate flood insurance rates. The average annual rate for flood insurance within the City of Boulder in 2014 was \$760 (3,830 policies), including “preferred risk” policies for structures outside of the 100-year floodplain. Flood insurance and land use regulations provide some protection from potential losses due to floods. Flood protection land use regulations also create costs for property owners in the form of permit fees, increased costs of remodeling, and restrictions on development.
- **Environmental:** Floods can result in damage or destruction to buildings and corresponding release of manmade contaminants. Floodwaters can also cause erosion and damage to areas of the natural environment that are not capable of conveying high-velocity stormwater. Updated flood mapping more accurately identifies the areas with the greatest flooding risks and potential mitigation opportunities.
- **Social:** Floodplain mapping provides the basis for flood management by identifying the areas subject to flooding. This information is essential for determining areas where life safety is threatened and property damage is likely. Land use regulations help reduce risks to people and property in areas with a high risk of flooding. Accurate mapping of flood risks also helps the city implement effective flood preparedness and response programs, thereby increasing the safety of people living, working or visiting in Boulder.

OTHER IMPACTS

- **Fiscal:** Funding for this study is included in the Utilities Division’s 2015 budget.
- **Staff Time:** Staff time for completing the study is included in existing work plans.

BOARD AND COMMISSION FEEDBACK

The Water Resources Advisory Board (WRAB) considered the Upper Boulder Slough Floodplain Mapping Study update on July 21, 2014. The WRAB unanimously recommended that the City Council adopt the Upper Boulder Slough floodplain mapping revision.

PUBLIC FEEDBACK

Postcard notifications were sent to all property owners and residents in the project area and letters were mailed to all affected property owners to inform them about the mapping study, upcoming public meetings, and where to find information about the study on the city website. An open house meeting was held in early July 2014 to inform the public about the mapping revisions. Most questions and concerns were about flood insurance requirements and plans for future drainageway improvements to mitigate flood risks.

BACKGROUND

The risk of flash flooding is an important issue for the city, primarily due to its location at the mouth of Boulder Canyon and other canyon creeks. Approximately 13 percent of the city is located within the 100-year floodplains of Boulder Creek and its 14 tributaries. Nearly 2,600 individual structures are located within this flood zone. For additional information about the city's floodplain management program, floodplain regulations, and flood insurance, read the [Flood Management Program Overview](#).

Floodplain mapping provides the basis for the city's floodplain management program by identifying the areas with the greatest risk for flooding. Changes in land use, updated topographic mapping, and upgrades to hydrologic and hydraulic models warrant periodic mapping updates.

The city delineates four flood zones, as described below.

- **500-year floodplain:** The 500-year floodplain delineates the flood limits resulting from a storm that has a 0.2 percent chance of occurring in any given year.
- **100-year floodplain:** The 100-year floodplain delineates the flood limits resulting from a storm that has a 1 percent chance of occurring in any given year (a 26 percent chance during a 30-year mortgage).
- **Conveyance zone:** The conveyance zone is the area of the floodplain that is specifically reserved for the passage of floodwaters. This zone is delineated to allow development to occur in some areas of the floodplain while still accommodating the passage of 100-year storm flows.
- **High-hazard zone:** The high-hazard zone defines the area of the floodplain where water depth and velocity pose a threat to life and safety. This area is delineated for areas in the floodplain where water depths are four feet or greater, or where the water velocity multiplied by the water depth equals or exceeds the number four.

The city has recently updated or is in the process of updating the floodplain mapping for all of Boulder's major drainageways. Current floodplain mapping studies include Upper

Goose and Twomile Canyon creeks, Skunk Creek, Kings Gulch, and Bluebell Canyon Creek.

On Sept. 30, 2014, a [Flood Management study session](#) was held with council. Staff communicated that floodplain mapping studies are currently under review and are scheduled to be brought to council. City Council members supported the mapping studies being reviewed as consent items, provided there are no significant issues of concern.

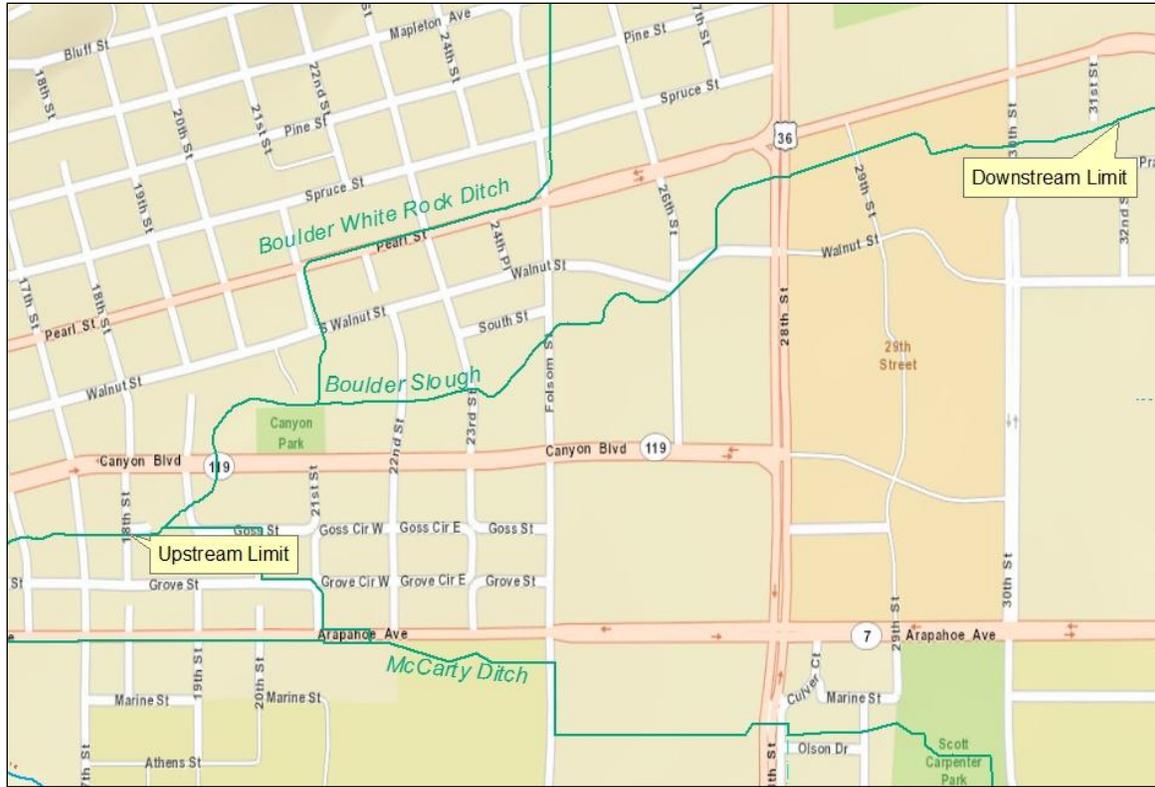
ANALYSIS

FEMA requires a Letter of Map Revision (LOMR) in order to update floodplain mapping and hydraulic models. The city is making the Upper Boulder Slough LOMR request to update a short reach of the Boulder Slough floodplain, which is a diverted outflow off of Boulder Creek. The hydrology used in the mapping update is from the 2012 FEMA Flood Insurance Study, based on a 1981 hydrologic analysis by Muller Engineering. This hydrology was verified during the 2013 Boulder Creek remapping study and includes the following 100-year (1 percent chance) flood discharges:

Location	100-Year Peak Discharge in Cubic Feet Per Second (CFS)
18 th Street	225
Canyon Blvd.	234
22 nd Street	261
Folsom Ave.	267
26 th Street	325
28 th Street	488
30 th Street	712

In 2013, the city completed a floodplain study for Boulder Creek to reflect changes authorized by city floodplain permits and update hydraulic models based on better, more detailed topographic information. The Boulder Creek floodplain study did not include the flow path for the Boulder Slough downstream of 18th Street. The Boulder Creek floodplain study was submitted to FEMA in September 2013, is currently going through the FEMA adoption process, and is expected to be finalized in the spring of 2016.

The Boulder Slough LOMR study will update the hydraulic models and flood hazard mapping for the 100-year floodplain, conveyance zone, and high-hazard zone for the reach of Boulder Slough from 30th to 18th streets, including two split-flow paths north of the slough and west of 26th Street, as shown in the map below. The previous floodplain mapping for the Boulder Slough did not include conveyance zone or high-hazard zone delineations. Modeling and mapping of this reach, as well as the split-flow paths, utilizes 2013 LiDAR-based topographic data. The Boulder Slough downstream (east) of 30th Street will be updated as a separate effort, following the completion of the improvements that are currently under construction.



Upper Boulder Slough Study Limits

A summary of the number of structures affected by this remapping is provided below.

Number of Structures	100-Year Floodplain	Conveyance Zone	High Hazard Zone
Existing Floodplain	38	0	0
Proposed Floodplain	65*	11	2
Change	+25*	11	2
No Longer Affected	19	0	0
Newly Affected	40	11	2
No Change	25*	0	0

* Includes six structures that are already included within the Boulder Creek 100-year floodplain.

All structures within the 100-year floodplain with federally backed financing are required to purchase flood insurance. The city’s floodplain regulations also apply to all properties within the 100-year floodplain, although existing structures that were constructed without a 100-year floodplain designation are grandfathered in and can remain in their current configuration. Since this portion of the Boulder Slough is entirely within the 500-year floodplain of Boulder Creek, there are no proposed revisions to the 500-year floodplain.

Results

Attachments A through C present figures showing a comparison between the existing and proposed floodplain mapping.

MATRIX OF OPTIONS:

City Council options for review and consideration include:

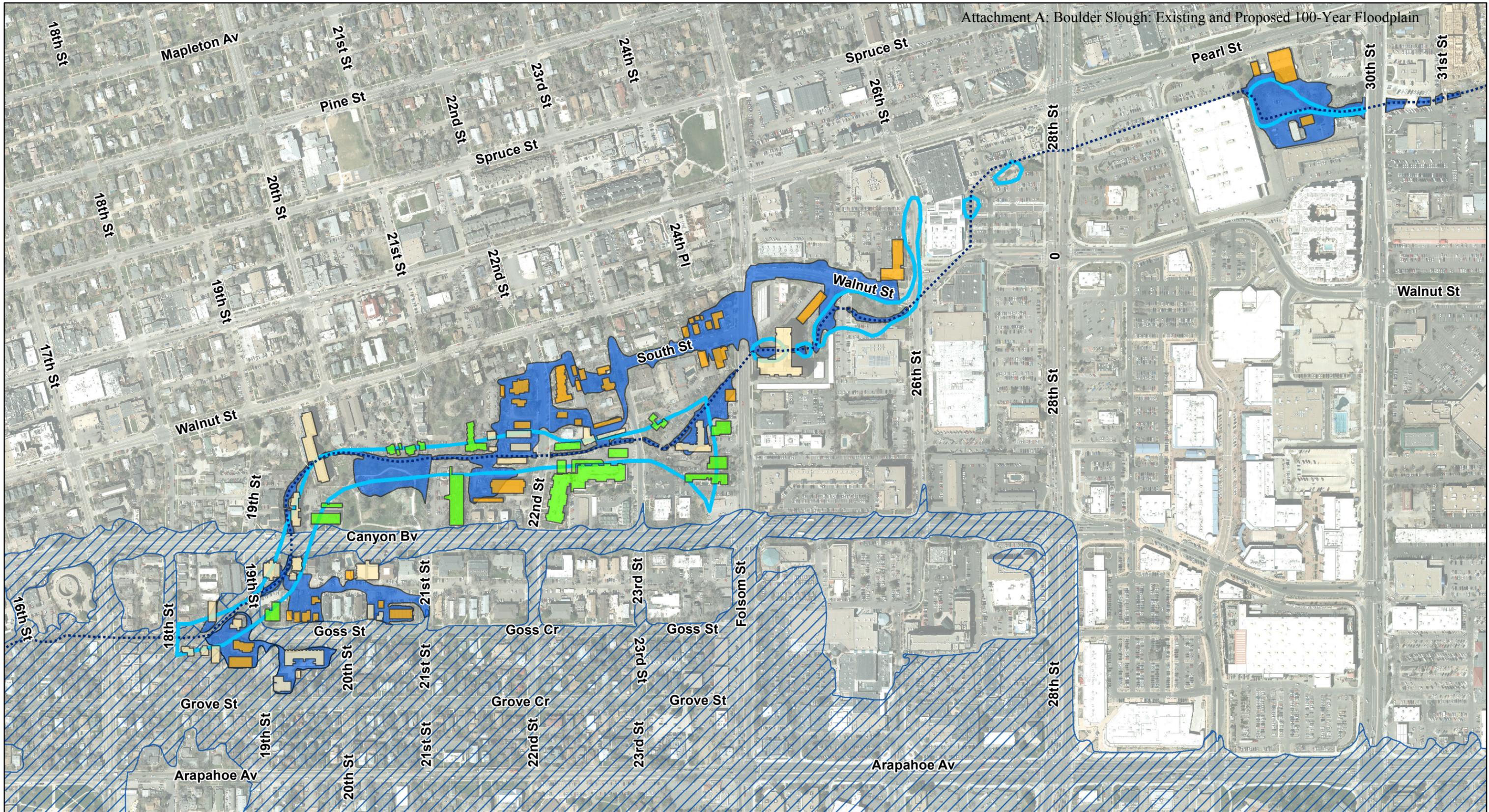
1. Accept the updated floodplain mapping study, which will then be submitted to FEMA. Staff would then consider and use the study results in the regulation of all annexations and development proposals during the interim period while FEMA reviews the study results (staff recommendation); or
2. Recommend changes or conditions before accepting the updated floodplain mapping study, submitting it to FEMA, and directing city staff to use the results for regulation; or
3. Reject the updated flood study and continue use of the current floodplain maps for city regulatory purposes.

NEXT STEPS:

If City Council approves the map revisions, staff will submit the LOMR request to FEMA for review. During the FEMA review and approval process (estimated to be six to 12 months), it is recommended that the new mapping be used for regulatory purposes by regulating to the more restrictive of the existing and proposed mapping. This would mean that new developments within the newly identified flood zones would be subject to the proposed floodplain regulations. In order to comply with FEMA requirements, development within the areas that are being removed from the floodplain would still be subject to the city's floodplain regulations until FEMA officially adopts the new floodplain mapping. Therefore, the more restrictive of the existing and proposed mapping would apply. Following formal adoption by FEMA, the city would regulate solely based on the new mapping.

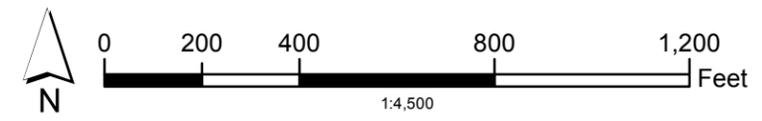
ATTACHMENTS:

- A. Boulder Slough: Existing and Proposed 100-Year Floodplain
- B. Boulder Slough: Existing and Proposed Conveyance Zone
- C. Boulder Slough: Existing and Proposed High-hazard Zone



Legend

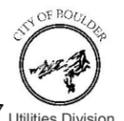
-  Proposed Boulder Slough 100 Year Floodplain
-  Effective Boulder Slough 100 Year Floodplain
-  Revised Boulder Creek 100 Year Floodplain
-  Buildings Added to the 100 Year Floodplain (40)
-  Buildings Remaining in the 100 Year Floodplain (25)
-  Buildings Removed from the 100 Year Floodplain (19)
-  Boulder Slough



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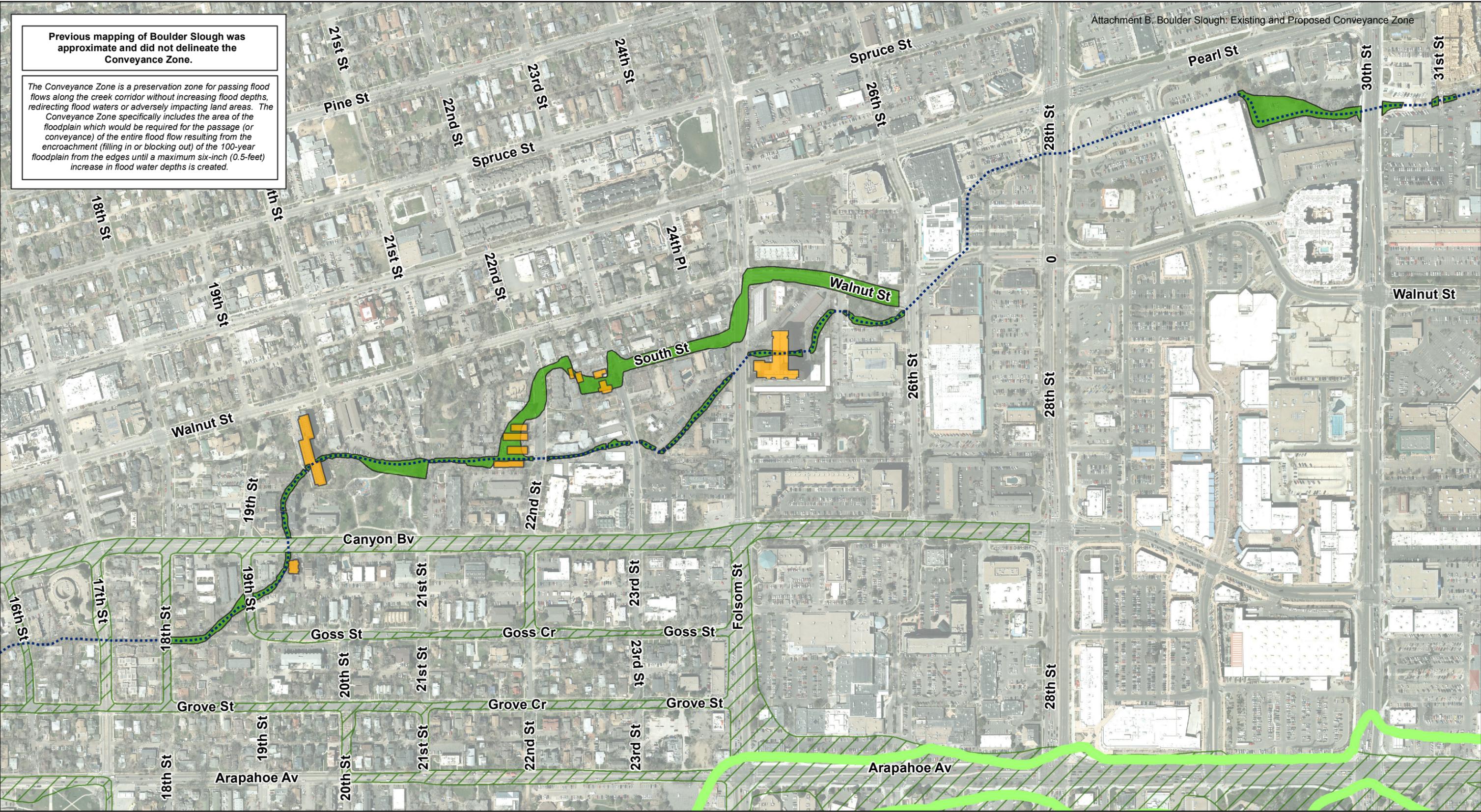
Boulder Slough

Proposed 100 Year Floodplain Compared to FEMA Effective



Previous mapping of Boulder Slough was approximate and did not delineate the Conveyance Zone.

The Conveyance Zone is a preservation zone for passing flood flows along the creek corridor without increasing flood depths, redirecting flood waters or adversely impacting land areas. The Conveyance Zone specifically includes the area of the floodplain which would be required for the passage (or conveyance) of the entire flood flow resulting from the encroachment (filling in or blocking out) of the 100-year floodplain from the edges until a maximum six-inch (0.5-foot) increase in flood water depths is created.



Legend

- Proposed Boulder Slough Conveyance Zone
- Buildings Added to the Conveyance Zone (11)
- Boulder Slough
- Buildings Remaining in the Conveyance Zone (0)
- Effective Boulder Creek Conveyance Zone
- Buildings Removed from the Conveyance Zone (0)
- Revised Boulder Creek Conveyance Zone

0 200 400 800 1,200 Feet
 1:4,500

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Boulder Slough

Proposed Conveyance Zone Compared to FEMA Effective

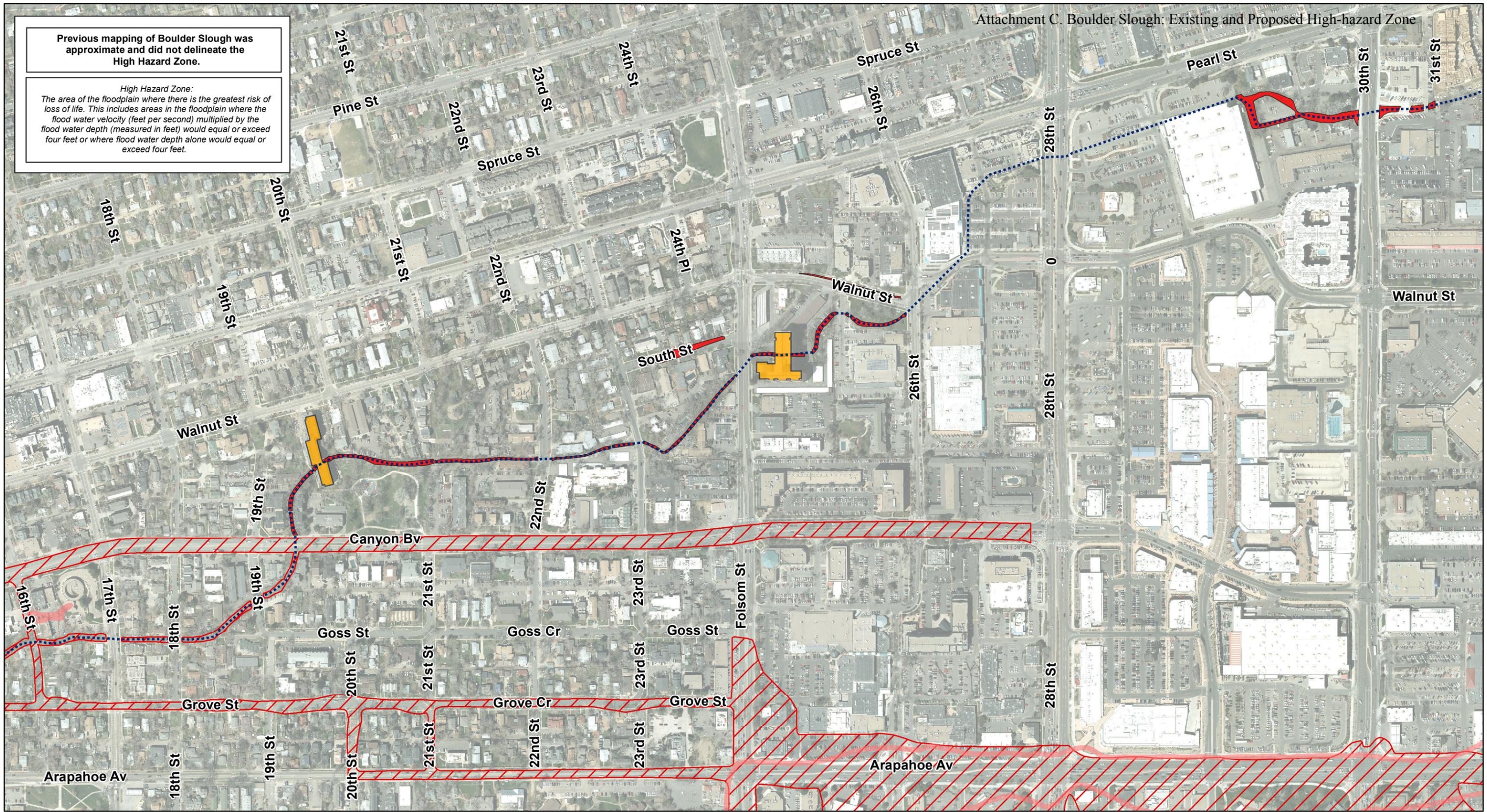
Agenda Item 3C

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Utilities Division
Rev: 7/11/2014

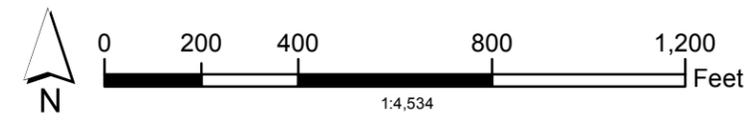
Previous mapping of Boulder Slough was approximate and did not delineate the High Hazard Zone.

High Hazard Zone:
 The area of the floodplain where there is the greatest risk of loss of life. This includes areas in the floodplain where the flood water velocity (feet per second) multiplied by the flood water depth (measured in feet) would equal or exceed four feet or where flood water depth alone would equal or exceed four feet.



Legend

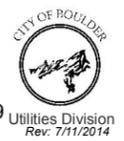
-  Proposed Boulder Slough High Hazard Zone
-  Effective Boulder Creek High Hazard Zone
-  Revised Boulder Creek High Hazard Zone
-  Buildings Added to the High Hazard Zone (2)
-  Buildings Remaining in the High Hazard Zone (0)
-  Buildings Removed from the High Hazard Zone (0)
-  Boulder Slough



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Boulder Slough

Proposed High Hazard Zone Compared to FEMA Effective





**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

*This resolution was passed on the Council Meeting on January 20.
However, the resolution was missing from the original packet and is
therefore included in this packet*

AGENDA TITLE

Consideration of a motion to adopt Resolution No. 1154 authorizing the City Manager to enter into the Trust Agreement for the Colorado Firefighter Health and Circulatory Benefits Trust and setting forth related details

PRESENTER/S

Jane S. Brautigam, City Manager
Bob Eichen, Chief Financial Officer
Cheryl Pattelli, Director of Finance
Stewart Ellenberg, Risk Manager

EXECUTIVE SUMMARY

SB14-172 was signed into Colorado law on June 5, 2014 for enactment on January 1, 2015. The law requires the City of Boulder and other employers of firefighters to provide supplementary benefits to firefighters for cardiac and circulatory incidents that occur within 48 hours of a stressful or strenuous activity related to fire suppression, rescue, hazardous material response, etc. There are seven specific benefits provided by the law and each incident could cost up to \$250,000.

Staff has considered three options for complying with this new law – purchasing commercial insurance, self-insuring the risk, or joining a pooling arrangement known as the Colorado Firefighter Health and Circulatory Benefits Trust, referred to in this agenda as the “Trust”. After reviewing three potential options, staff believes that joining the Trust is the best option because it completely transfers the risk to the Trust and the

premium cost will be reimbursed by the Department of Local Affairs for the next two years. In order to join the Trust, council needs to adopt the attached resolution.

The timely analysis of the available options has been hindered by a lack of comparative information. Therefore, there has been a delay in being able to complete the appropriate amount of due diligence and risk analysis. All entities that are impacted by this new law have had the same problem. City staff has been told if action is taken in early January by the City Council coverage will be retroactive to January 1.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt a Resolution authorizing the City Manger to enter into the trust agreement for the Colorado Firefighter Health and Circulatory Benefits Trust and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic - This passage of this resolution will have an impact on the economic sustainability of the city if the risk is not reduced to a manageable level. By using the proposed method, the City will be able to transfer the entire disability benefit cost of any single firefighter cardiac or circulatory event to the Trust that has been established. Each incident could cost the city up to \$250,000 if the city were to retain the risk and not use the trust.
- Environmental - There are no known environmental impacts due to the proposed action.
- Social - There are no known social impacts due to the proposed action.

OTHER IMPACTS

- Fiscal –The current annual cost of joining the Colorado Firefighter Health and Circulatory Benefits Trust is \$17,500 which is based upon a cost of \$175 per 100 eligible firefighters. The Department of Local Affairs will reimburse the City for this expense in 2015 and 2016 as long as funding is available. If funding is not available, then this becomes an unfunded mandate and the City would not be required to offer this benefit unless the city decided to pay the cost without being reimbursed. Indications are at this time that the State will reimburse the City for costs in 2015. Future reimbursements will be determined on an annual basis.
- Staff time – Risk Management and Fire Department staff will work together to complete the necessary administrative paperwork to join the Trust and receive

reimbursement from DOLA for the cost of the program. The additional work can be completed by current staff as part of their normal workload.

BACKGROUND

SB14-172 was signed into Colorado law on June 5, 2014 for enactment on January 1, 2015. This law requires municipalities, special districts, fire authorities or county improvement districts employing one or more full-time firefighters to provide supplementary benefits for cardiac and circulatory issues that occur within 48 hours of a stressful or strenuous activity related to fire suppression, rescue, hazardous material response, etc. Employers may purchase insurance, self-insurance or participate in a self-insurance pool or a multi-employer trust.

To avoid an unfunded mandate, the employer’s cost of supplying the benefit is reimbursable to the employer by the Colorado State Department of Local Affairs (DOLA). DOLA was granted \$904,145 from the State general fund to cover the expenses. If annual funding of DOLA is insufficient, the employer requirement to maintain this benefit becomes optional.

There are numerous disability benefits that must be paid to a firefighter who sustains a qualifying cardiac or circulatory event and they are capped at \$250,000 per incident. The covered benefits of the new law include:

Coverage Area	Benefit
1. Medical exam reveals firefighter (FF) has a heart / circulatory malfunction	\$4,000 lump sum
2. FF is hospitalized up to 48 hours	\$1,500 per week, up to 7 weeks
3. FF is hospitalized more than 48 hours	\$2,000 per week, up to 25 weeks
4. FF unable to return to employment	\$2,500 per week, up to 80 weeks
5. FF requires rehab employment services	Up to \$25,000 for services
6. FF incurs cosmetic disfigurement	\$10,000 lump sum
7. Medical exam reveals FF has a terminal heart or circulatory malfunction	Up to \$25,000 lump sum

The Colorado Fire Chief’s Association worked with an insurance broker to develop the “Colorado Firefighter Health and Circulatory Benefits Trust” which is a pooling arrangement to provide the required benefits. In order to join the Trust, the governing board of a public entity must pass a resolution outlined by the Trust.

ANALYSIS AND OPTIONS

If City Council approves the adoption of the Colorado Firefighter Health and Circulatory Benefits Trust Agreement, it will transfer the risk for coverage under this new for compliance.

Three possible options are available and were analyzed.

- (1) Purchase commercial insurance. There is currently only one company, Volunteer Firemen's Insurance Services, Inc., that offers this coverage. Unfortunately, this policy does not provide all of the benefits required by the new law. As a result, the City would have to self-insure the gaps in coverage which could be in excess of \$100,000 per incident. The insurance policy also does not offset coverage benefits by the required 25% for firefighters who have smoked within the previous five years. It does not require firefighters to have the required five years of firefighting experience or have the required medical exams prior to an event. Given that this policy only provides partial coverage for the loss exposure, it does not appear to be a viable option.
- (2) Self-Insure. The City would pay claims as they occur without any insurance company involvement. The City would need to estimate the potential cost of claims each year, and would be reimbursed for the estimated claim costs by DOLA. The cost of potential claims is very difficult to determine though due to the lack of objective loss data available and the small number of firefighters (100) within the Boulder Fire Department. Without a large number of lives being covered, the fluctuation in claim frequency and severity can be very large leading to wide swings in the cost to self insure.

The City would have to provide insurance adjustment of any claims internally. This would be difficult to do because the new law was not written clearly concerning the required benefits. As a result, if there is a dispute in the benefits paid, the City would have to defend itself in any legal action taken against the City. The City would also have to develop administrative guidelines and a coverage document for approval by DOLA. Given that we cannot accurately estimate potential claim costs, the administrative burden to adjust claims internally, and the need to defend any lawsuits from disputed claims, this option also appears to not be viable.

Due to the great amount of uncertainty and risk, staff does not feel this is viable option at this time. Once sufficient data has been compiled from future years the city may want to revisit this option.

- (3) Join the Colorado Firefighter Heart and Circulatory Benefits Trust. The City would transfer the entire risk for any claims to the Trust which is set up like an insurance pool. The Trust would take responsibility for claim handling and

defending any lawsuits. DOLA would reimburse the City for the estimated premium of \$17,500. There is a concern however that the Trust may have underestimated the claim frequency and will have to raise insurance rates in the future. As long as DOLA will reimburse the City though for any premiums, this should not be a major concern. Given that the City can transfer the risk to the Trust, avoid claim handling and the cost of lawsuits, this appears to be the best option for complying with the law.

ATTACHMENTS

Attachment A: Resolution authorizing the City Manger to enter into the trust agreement for the Colorado Firefighter Health and Circulatory Benefits Trust and setting forth related details.

RESOLUTION NO. 1154

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE TRUST AGREEMENT FOR THE COLORADO FIREFIGHTER HEALTH AND CIRCULATORY BENEFITS TRUST AND SETTING FORTH RELATED DETAILS

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. An employer is required to maintain certain firefighter heart and circulatory malfunction benefits in accordance with and subject to the requirements and limitations of the “Firefighter Heart and Circulatory Malfunction Benefits.” Section 29-5-301 *et seq.*, C.R.S.

B. In order to provide such benefits, an employer, which includes the City of Boulder (the “City”) is authorized to participate in a multiple employer health trust.

C. The City Council has authority under Article XIV, Section 18(2)(a) of the Colorado Constitution, and Sections 10-3-903.5, 29-1-201, *et seq.*, and 29-5-302, C.R.S., as amended, to participate with other employers in a multiple employer health trust for the provision of such benefits and for related claims handling, risk management, and other functions and services related to such benefits.

D. The City Council has reviewed the Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust, a copy of which is attached to this Resolution as Exhibit A, by and through which the Members (as defined therein) desire to establish a trust (the “Trust”) and provide a benefit plan that provides firefighter heart and circulatory malfunction benefits consistent with the provisions of Section 29-5-301 *et seq.*, C.R.S., as specified in the Colorado Firefighter Heart and Circulatory Malfunction Benefits Plan (the “Plan”).

E. The Members intend that the Trust, together with the Plan, shall constitute an irrevocable trust exempt from taxation under Internal Revenue Code Section 115.

F. The City Council desires to authorize the City Manager to enter into the Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust, and to take other actions in connection therewith.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Boulder, Colorado:

1. Approves the form of the contract entitled Trust Agreement for the Colorado Firefighter Heart and Circulatory Benefits Trust, the form of which is attached hereto as Exhibit A and incorporated into this Resolution by this reference (the “Trust Agreement”).
2. Authorizes the City Manager to execute the Trust Agreement on behalf of the City.

3. Authorizes the City Manager to transmit to the Colorado Firefighter Heart and Circulatory Benefits Trust (the "Trust"), to McGriff, Seibels & Williams, Inc. PO Box 1539, Portland, OR 97201, executed and attested copies of this Resolution and such Trust Agreement.
4. Directs the City Manager to designate an employee to be the Member Representative to the Trust and an employee to be the Alternate Representative to the Trust, and provide this information to the Trust.
5. Understands that, with the adoption of this Resolution, execution of the Trust Agreement, and subject to the terms of the Trust Agreement, the City will become a Member of the Trust, with its participation to commence effective as of the date determined in accordance with the Trust Agreement.

IN WITNESS WHEREOF, this Resolution was adopted by a majority vote of the City Council of the City of Boulder, Colorado on the 3rd day of February, 2015.

CITY OF BOULDER, COLORADO

Mayor

ATTEST:

City Clerk

TRUST AGREEMENT

FOR

**COLORADO FIREFIGHTER HEART AND CIRCULATORY
BENEFITS TRUST**

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TRUST AGREEMENT

THIS TRUST AGREEMENT (this “Agreement”) is entered into on this ____ day of _____, 2014 (the “Effective Date”) by and between the undersigned Colorado governmental entities (who, together with and any other Colorado governmental entities that becomes a participating Member under this Trust, are collectively the “Members”) and the undersigned trustees constituting the “Trust Committee” for the Trust, as defined herein (the “Trust Committee”).

WITNESSETH:

WHEREAS, the Members are exempt from federal income tax under the Internal Revenue Code of 1986, as amended, as a state or territory of the United States, or any political subdivision, municipality or agency thereof, or an agency of such political subdivision or municipality (including any corporation owned or controlled by any state or territory of the United States or by any political subdivision, municipality, or agency); and

WHEREAS, the Members desire by and through this Agreement to provide a benefit plan that provides heart and circulatory malfunction benefits consistent with the provisions of Part 3 of Article 5 of Title 29, Colorado Revised Statutes (C.R.S.), as specified in the Colorado Firefighter Heart and Circulatory Malfunction Benefits Plan (the “Plan”); and

WHEREAS, the Members desire for the Trust to accept funds that shall from time to time be paid over to the Trust Committee in accordance with the terms of this Agreement, together with the earnings and profits thereon, if any, and to hold the funds in trust (the “Trust”) and to make disbursements from the Trust in accordance with the provisions of this Agreement and the Plan; and

WHEREAS, the Members desire to appoint the Trust Committee as a trustee to hold and administer the assets of the Plan in accordance with this Agreement; and

WHEREAS, the Trust Committee has agreed to serve as trustee of the trust established under this Agreement; and

WHEREAS, the Members intend that the Trust hereby established, together with the Plan, shall constitute an irrevocable trust exempt from taxation under Internal Revenue Code Section 115; and

WHEREAS, the Members intend that the Trust hereby established, together with the Plan, shall constitute a multiple employer health trust for the purpose of Part 3 of Article 5 of Title 29, C.R.S.;

NOW, THEREFORE, the Members and the Trust Committee hereby mutually covenant and agree as follows:

ARTICLE I DEFINITIONS

The following words and phrases, when used herein with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Agreement unless otherwise specified.

- 1.1 **Administrator** means the person, committee or entity appointed by the Trust Committee to serve as plan administrator of the Plan. The Administrator shall be retained by the Trust Committee and shall administer the Plan pursuant to an administrative services agreement entered into between the Administrator and the Trust Committee.
- 1.2 **Authorized Investment** means and is limited to those investments that are defined as permissible for investment of public funds in Section 24-75-601 et seq. C.R.S., as in effect from time to time.
- 1.3 **Beneficiary** means any person designated under the terms of the Plan to receive benefits payable upon the death of a Participant.
- 1.4 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.5 **Custodian** means Wells Fargo Bank, N.A., which shall serve as custodian for the Trust Fund. To the extent any assets are held by any custodian other than Wells Fargo Bank, N.A., such party shall also be considered a Custodian for the Trust.
- 1.6 **Fiscal Year** means the accounting year of the Trust, which shall commence on January 1 and end on December 31 of each year, except that the first year shall commence on the Effective Date and shall end on the immediately following December 31.
- 1.7 **Investment Committee** means the person, committee or entity appointed in accordance with the terms of the Trust to make and effect investment decisions under the Plan and Trust. Unless the Trust Committee appoints an Investment Committee, the Trust Committee shall be deemed to be the Investment Committee.
- 1.8 **Investment Fund** means any of the separate funds established by the Investment Committee for the investment of Plan assets.
- 1.9 **Investment Manager** means any person, corporation or other organization or association appointed by the Trust Committee pursuant to the terms of Section 4.3 to manage, acquire or dispose of the assets of an Investment Fund.
- 1.10 **Members or Member** means those governmental employers listed on Exhibit A and any other governmental employer that becomes a participating Member under this Trust pursuant to Article VIII, below.

- 1.11 **Member Representative** means that person who has been designated in writing by a Member as its representative to the Trust.
- 1.12 **Participant** means an employee or former employee of the Member.
- 1.13 **Plan** means the Colorado Firefighter Heart and Circulatory Benefits Plan set forth in Part 3 of Article 5 of Title 29, Colorado Revised Statutes, and in the Plan Summary of Benefits as such Plan may be amended from time to time.
- 1.14 **Trust** means the trust established by this Agreement.
- 1.15 **Trust Committee** means the Trust Committee appointed pursuant to Section 3.1 of this Trust Agreement, acting as a group or body.
- 1.16 **Trust Fund** means the total amount of cash and other property held in the Trust under this Agreement.
- 1.17 **Trustee** means the Trust Committee members and their successors as provided by this Agreement.

ARTICLE II ESTABLISHMENT OF THE TRUST

- 2.1 **Trust Established.** The Members hereby establish with the Trust Committee, as a funding medium for the Plan, a Trust consisting of the Trust Fund and such earnings, profits, increments, additions and appreciation thereto and thereon as may accrue from time to time.
- 2.2 **Limit of Interest - Impossibility of Diversion.** It shall be impossible at any time for any part of the Trust to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries covered under the Plan, except that the payment of taxes and administration expenses may be made from Trust funds as hereinafter provided. Funds of the Trust may not be transferred to any other account or fund of a Member.
- 2.3 **Trust Committee's Acceptance.** The Trust Committee accepts the Trust hereby created and agrees to perform the duties hereby required of the Trust Committee.

ARTICLE III TRUSTEES AND SUCCESSOR TRUSTEES

- 3.1 **Trustees.** The Trust shall be administered by the Trust Committee. The Trust Committee shall be comprised of seven (7) individual Trustees; provided, however, that the Trust Committee shall be deemed duly constituted and may commence operations of the Trust upon seating of and execution of this Agreement by four (4) initial Trustees. Each Trustee must be a Participant and current employee of a Member, except as provided below. Trustees shall be

appointed by the Board of Directors of the Colorado State Fire Chiefs (“CSFC Board”) from among the following:

- (a) One Trustee who is a Member Representative from a fire district or fire authority serving an area having less than thirty thousand (30,000) in population;
- (b) One Trustee who is a Member Representative from a fire district or fire authority serving an area having more than thirty thousand (30,000) in population;
- (c) One Trustee who is a Member Representative from a municipality having less than thirty thousand (30,000) in population;
- (d) One Trustee who is a Member Representative from a municipality having more than thirty thousand (30,000) in population;
- (e) One Trustee who is a Participant and officer of the Colorado Professional Firefighters Association (“CPFF”), who is designated for appointment by CPFF; and
- (f) Two Trustees who are Member Representatives from two other Members of any size or type, who are elected or appointed officials or employees of the Member and are not firefighters eligible for participation in the Plan.

Nominations for Trustees from the Members and CPFF shall be made by elected governing body of the Member (i.e., district board of directors, city council, CPFF Board of Directors) and be submitted to the CSFC Board at such time as the CSFC Board may provide. Terms of the Trustees shall be two-year, overlapping terms or until their successors have been appointed, except that among the initial Trustees, four of them shall serve an initial term of two years and three of them shall serve an initial term of one year as set for below so as to establish the staggering of terms. The term shall begin on a January 1, and end at midnight on a December 31, except that the initial undersigned Trustees’ terms shall begin upon the formation of the Trust.

A vacancy shall occur on the Trust Committee when a Trustee (1) submits a written resignation to the Trust Committee; (2) dies; (3) ceases to be a Participant; (4) ceases to be a Member Representative, except in the case of the CPFF Trustee to whom such requirement (4) does not apply; (5) fails to attend three consecutive regular meetings of the Trust Committee without the Committee having entered upon the record its proceedings an approval for an additional absence or absences, except that such additional absence or absences shall be excused for temporary mental or physical disability or illness; or (6) is convicted of a felony. Any vacancy on the Trust Committee shall be filled by appointment by the CSFC Board for the unexpired portion of the term. Upon appointment and written acceptance thereof, a successor Trustee shall have all the title, rights, powers and privileges and duties conferred or imposed upon the initial or predecessor Trustee.

3.2 **Successor Trustees.** No successor Trustee need examine the accounts, records and acts of any previous Trustee of any allocation of the Trust assets, nor shall such successor Trustee be

responsible for any act or omission to act on the part of any previous Trustee. All Trustees and their successors from time to time acting under this Agreement shall have all the rights, powers and duties of the initial Trustees named in this Agreement, unless this Agreement is amended to provide otherwise.

3.3 **Compensation.** The Trustees shall receive no compensation for their services rendered under this Agreement other than any compensation as an employee of a particular Member. The Trust Committee may adopt policies to reimburse Trustees for actual meeting expenses and attendance at the Trust Committee meetings and other properly incurred expenses on Trust matters.

3.4 **Chair and Officers; Sub-Committees.** The officers of the Trust Committee shall be the chair, vice chair and secretary. The officers shall be appointed by the Trust Committee from among its members. Appointment of officers shall occur at the first meeting of the Trustee Committee each year. The Trust Committee may establish sub-committees necessary or appropriate to the exercise of its powers.

3.5 **Meetings.** The Trust Committee shall determine the time and place of its regular meetings. Special meetings of the Trust Committee may be called by the chair or by three (3) Trustees. The Trustees shall be provided with at least ten (10) days prior written notice designating the time, place and agenda of a regular meeting and three (3) days prior written notice designating the time, place and agenda of any special meeting. The manner of giving notice of meetings may include, without limitation, service by electronic mail to the Trustee's e-mail address. Regular and special meetings of the Trust Committee may be held by telephone or electronic (internet-based) conference call. Any meeting at which all Trustees are present in person, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the requirement to provide any notice.

3.6 **Proxy.** Any Trustee may duly authorize in writing another Trustee to cast a vote on one (1) or more specific matters to be voted on at a meeting, on behalf of such Trustee. Any such written authorization must specify the matter or matters and be given for a specific meeting and may not carry over to subsequent meetings.

3.7 **No Delegates.** A Trustee and/or the Trustee's Member Representative may not appoint a delegate to serve in his or her place.

3.8 **Quorum and Voting.**

- (a) To constitute a quorum at any regular or special meeting of the Trust Committee and for any action to be valid at such meeting, there must be present in person or by proxy at least four (4) of the seven (7) Trustees.
- (b) Valid actions at meetings at which a quorum is present require the affirmative vote of a simple majority of those Trustees present and voting, except where an absolute majority is expressly required. Each Trustee shall cast his or her vote on each matter upon which action is taken, except where abstention from voting is

required because of conflict of interest.

- (c) To approve the following items, an absolute majority vote (as defined below) is required:
 - (1) Annual budget;
 - (2) Incurring any debt other than liabilities in the ordinary course of business; and
 - (3) Settling any litigation involving the Plan or Trust.

An absolute majority vote is the affirmative vote of at least four (4) Trustees.

3.9 **Action without a Meeting.** Any action that may be taken at a meeting of the Trust Committee may be taken without a meeting upon the written consent of a sufficient number of the Trustees otherwise required to approve such action at a meeting and shall be effective on the date of the last consent, unless two (2) or more Trustees object to taking the action without a meeting. A copy of such written consent, signed by the Trustees, shall be provided within ten (10) days of the effective date of the consent to each Trustee. Consent may be signified by a signature of the Trustee on a written consent or by an electronic means, such as an affirmative email response to a request for confirmation of favorable action on a matter, approval of a specific resolution, etc.

3.10 **Conflicts of Interest.** Trustees should avoid the appearance of impropriety. A Trustee shall exercise care that the Trustee's independent judgment in the discharge of Trust Committee responsibilities is not impaired as a result of conflicts between the interests of the Trust and the Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates. A Trustee shall not vote or decide upon any matter relating solely to himself or herself or vote in any case in which his or her individual right or claim to any benefit under the Plan is particularly involved or in which he or she otherwise has a conflict of interest. In the event that a Trustee believes that he or she has a conflict of interest, the Trustee shall disclose the conflict to the Trust Committee and shall refrain from participating in the matter to which the conflict relates. The minutes of the meeting where the disclosure is made shall reflect the disclosure and the fact of the Trustee having abstained from participation in the matter. A Trustee shall not use confidential information acquired in the course of the performance of Trust Committee responsibilities to further that Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates.

3.11 **Office Location and Meeting Place.** All meetings of the Trust Committee shall be held at a place designated at least annually by the Trust Committee, or the chair, if the Trust Committee is unable to reach an agreement regarding a meeting location. The Trust shall have its principal office at 433 S. Allison Parkway, Lakewood, CO 80226.

3.12 **Agent for Service of Legal Process.** The designated agent for service of legal process

shall be Samuel J. Light, Light Kelly, P.C. 101 University Blvd., Suite 210, Denver, Colorado 80206, or any successor agent as the Trust Committee shall designate.

3.13 **Rules and Regulations.** The Trust Committee shall have the power at any regular or special meeting to adopt bylaws, rules, regulations and policies for the administration of the Trust, and for the conduct of the affairs of the Trust Committee. Any bylaws, rules, regulations and policies of the Trust Committee shall be consistent with the written provisions of the Trust Agreement, and shall be binding upon all persons dealing with the Trust and upon any and all persons claiming any benefits under the Plan.

ARTICLE IV DUTIES OF TRUST COMMITTEE

4.1 **Duties.** It shall be the duty of the Trust Committee:

- (a) **Receipt of Contributions.** To receive any contributions paid to it under this Agreement in cash or in other property acceptable to the Trust Committee. The Trust Committee shall not be responsible for the calculation or collection of any contribution required to be paid by the Member to the Trust under the Plan, but shall be responsible only for property actually received by it pursuant to this Agreement.
- (b) **Management of Funds.** To hold, invest, reinvest, manage and administer (except as otherwise provided herein) all contributions so received, together with the income therefrom and any other increment thereon, for the benefit of Participants and their Beneficiaries in accordance with the terms of this Agreement.
- (c) **Payments.** To direct payments under the Plan; provided, however, that the Trust Committee may rely upon the directions received from the Administrator, and the Administrator hereby indemnifies the Trust Committee from any loss, claim, damage or liability, including legal expenses, that may arise in connection with the Trust Committee's acting upon such direction.
- (d) **Appointment of Administrator.** To appoint such person, committee or entity as the Trust Committee shall determine to serve as Administrator of the Plan, and to contract with the Administrator for provision of its services. The Trust Committee shall have the power to terminate the appointment of the Administrator upon written notice with or without cause.
- (e) **Appointment of Investment Committee.** To appoint as the Investment Committee such person, committee or entity as the Trust Committee shall determine to make and effect investment decisions under the Plan and Trust; provided, however, that the Trust Committee may appoint itself as the Investment Committee.

ARTICLE V
INVESTMENT OF TRUST ASSETS

5.1 **General Investment Power/Investment Funds.**

- (a) **Authority of Investment Committee.** Except as provided in Sections 5.2 and 5.3, the Investment Committee shall have all authority and responsibility for the management, disposition and investment of the Trust Fund, and the Trust Committee shall comply with directions of the Investment Committee. The Investment Committee shall not issue any directions that are in violation of the terms of the Plan or this Agreement.

- (b) **Investment Funds.** The Trust may be divided into one or more separate Investment Funds, the number, makeup and description of which shall be determined from time to time by the Investment Committee. The Trust Committee shall implement, terminate, value, transfer to and from and allocate the gains, losses and expenses among the Investment Funds in accordance with the proper directions of the Investment Committee, the Administrator, or their delegates, and, to the extent applicable under the terms of this Agreement, the directions of Investment Managers.

- (c) **Funding Policy.** The Trust Committee shall have responsibility for selecting or establishing and carrying out a funding policy and method, consistent with the objectives of the Plan. The Trust Committee shall be responsible for the proper diversification of the Trust Fund, for the prudence of any investment of Trust assets consistent with State law, for compliance with statutory limitations on the amount of investment in securities, and for assuring that any such investments meet the requirements of State law.

5.2 **Investment Managers.**

- (a) **Appointment.** The Investment Committee may, but shall not be required to, appoint one or more Investment Managers to manage the assets of all or any one or more of the Investment Funds. Each such Investment Manager shall be either (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in such Act; or (iii) an insurance company qualified to perform the services of Investment Manager under the laws of more than one state. The Investment Committee shall obtain from any Investment Manager so appointed by it a written statement acknowledging (i) that such Investment Manager is or on the effective date of its appointment will become a fiduciary with respect to the Trust assets under its management; (ii) certifying that such Investment Manager has the power to manage, acquire or dispose of Trust assets in the manner contemplated by the contract or other written instrument by which its appointment is or will be effected; and (iii) certifying that it is either an investment adviser, a bank or an insurance company which is qualified to be appointed as an Investment Manager under this Agreement.

- (b) **Contractual Arrangement.** The Investment Committee shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions and shall grant to the Investment Manager such authority and responsibilities in the management of the applicable Investment Fund assets as the Investment Committee deems appropriate under the circumstances. Without limiting the generality of the foregoing, such contract may establish investment objectives for the assets of the Investment Fund(s) under the management of the Investment Manager and may limit the types of assets that may be acquired or held by such Investment Fund(s).
- (c) **Trust Committee's Duties.** With respect to each Investment Fund the management of which has been delegated to an Investment Manager, the Trust Committee shall follow and carry out the instructions of the appointed Investment Manager with respect to the acquisition, disposition and reinvestment of assets of such Investment Fund, including instructions relating to the exercise of all ownership rights in such assets.
- (d) **Failure to Direct.** In the event that an appointed Investment Manager shall fail to direct the Trust Committee with respect to investment of all or any portion of the cash held in an Investment Fund under its management, the Trust Committee shall invest such cash only when and as directed by the Investment Committee.
- (e) **Termination of Appointment.** The Investment Committee shall have the power to terminate the appointment of an Investment Manager upon written notice with or without cause. Upon the termination of the appointment of an Investment Manager, the Investment Committee shall (i) appoint a successor Investment Manager with respect to the Investment Fund(s) formerly under the management of the terminated Investment Manager, (ii) direct the Trust Committee to merge or combine such Investment Fund(s) with other Investment Fund(s) or Trust assets, or (iii) direct the Trust Committee to invest the assets of such Investment Fund as the Investment Committee deems appropriate in accordance with the existing funding policy.

5.3 **Manner and Effect of Directions.**

- (a) **Delegation of Authority to Custodian.** The Custodian is delegated the authority and responsibility for receiving and carrying out the directions of the Trust Committee, the Administrator, the Investment Committee, any Investment Manager or their designees. With respect to any assets held by a party other than Trust Committee, the Trust Committee is authorized and directed to delegate to the Custodian the authority and responsibility for receiving and carrying out the directions of the Investment Committee, any Investment Manager or their designees. The Trust Committee is authorized and directed to enter into such

agreements with another Custodian as are deemed necessary or appropriate to effect such delegation.

- 5.4 **Authorization of Designee(s).** The Administrator and the Investment Committee may each appoint one or more designees to act on their behalf. If a designee (or designees) is appointed, the appropriate committee shall furnish the Trust Committee with written documentation of the appointment and a specimen signature of each designee. The Trust Committee shall be entitled to rely upon such documentation until the Trust Committee is otherwise notified in writing.

ARTICLE VI POWERS OF TRUST COMMITTEE

- 6.1 **General Authority.** In accordance with the directions of the Investment Committee and any Investment Managers as provided in Article V, the Trust Committee shall receive, hold, manage, convert, sell, exchange, invest, reinvest, disburse and otherwise deal with the assets of the Trust, including contributions to the Trust and the income and profits therefrom, without distinction between principal and income and in the manner and for the uses and purposes set forth in the Plan and as hereinafter provided.
- 6.2 **Specific Powers.** In the management of the Trust, the Trust Committee shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof; provided, all such powers shall be exercised only upon and in accordance with the directions of the Investment Committee and, to the extent applicable, any duly appointed Investment Managers:
- (a) **Purchase of Property.** With any cash at any time held by it, to purchase or subscribe for any authorized investment (as defined in Section 6.3) and to retain the same in trust.
 - (b) **Disposition of Property.** To sell, exchange, transfer or otherwise dispose of any property at any time held by it.
 - (c) **Retention of Cash.** To hold cash without interest in administrative accounts for contribution and distribution processing in such amounts as may be reasonable and necessary for the proper operation of the Plan and the Trust.
 - (d) **Exercise of Owner's Rights.** The Members acknowledge and agree that the Trust Committee shall have the right or power to vote proxies appurtenant to securities that it holds. The Members acknowledge and agree that the Trust Committee shall have the power to make any review of, or consider the propriety of, holding or selling any assets held in the Trust Fund in response to any tender offer, conversion privilege, rights offering, merger, exchange, public offering and/or any proxy action for any of such assets.

- (e) **Registration of Investments.** To cause any stock, bond, other security or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees; provided, the books and records of the Trust Committee shall at all times show that all such investments are part of the Trust.
- (f) **Borrowing.** To the extent permitted by State law and at the direction of the Investment Committee, to borrow or raise money for the purposes of the Trust in such amounts, and upon such terms and conditions, as determined by the Investment Committee; and, for any sum so borrowed, to issue its promissory note as Trust Committee and to secure the repayment thereof by pledging all or any part of the Trust Fund to the extent permitted by State law; and no person lending money to the Trust Committee shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.
- (g) **Purchase of Contracts.** To apply for, purchase, hold, transfer, surrender and exercise all incidents of ownership of any insurance, re-insurance, excess or stop loss insurance or annuity contract that the Trust Committee determines or the Investment Committee directs it to purchase or that is necessary or appropriate to carrying out the purposes of the Plan. The Trust Committee shall endeavor to obtain stop loss insurance to provide coverage for payment of benefits under the Plan above specified per claim and aggregate limits, provided such stop loss coverage can be obtained at a reasonable cost as determined by the Trust Committee.
- (h) **Execution of Instruments.** To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted.
- (i) **Settlement of Claims and Debts.** To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend suits or legal or administrative proceedings and to represent the Trust in all suits and legal and administrative proceedings.
- (j) **Establish Rules and Policies.** To establish, to the extent consistent with this Agreement and the Plan, rules and policies necessary or appropriate to the administration of the Trust or the carrying out of the powers herein granted;
- (k) **Trustee Insurance.** To purchase on behalf of the Trust Committee and the Investment Committee, trustees' errors and omissions insurance or similar coverage in such amounts as are recommended by a licensed insurance broker for benefit plans and a trust of similar size and purpose.
- (l) **Risk Management.** To establish reasonable risk management policies and procedures.

- (m) **Delegation.** To delegate in writing fiduciary responsibilities or ministerial powers and duties to such officers, agents, representatives and independent contractors as determined desirable, provide such delegation does not conflict with the provisions of this Agreement or the Plan.
- (n) **Employment of Agents, Advisers and Counsel.** To employ suitable agents, actuaries, auditors, accountants, investment advisers, brokers and counsel, and to pay their reasonable expenses and compensation.
- (o) **Appointment of Custodian.** The Trust Committee shall designate a custodian to hold Trust assets. The Trust Committee may change the custodian upon an affirmative vote of four (4) Trustees.
- (p) **Power to do any Necessary Act.** To do all acts which it may deem necessary or proper and to exercise any and all powers under the Plan and this Agreement upon such terms and conditions as it may deem in the best interests of the Trust.

6.3 **Authorized Investments.**

- (a) **General Definition.** “Authorized investment” as used in this Article VI shall mean and be limited to those investments that are defined as permissible for investment of public funds in Section 24-75-601 et seq. C.R.S., as in effect from time to time.
- (b) **Responsibility for Compliance.** The responsibility for determining whether any investment of Trust assets complies with the terms of this Agreement and applicable law shall lie solely with the Trust Committee.

ARTICLE VII CONTRIBUTIONS TO THE TRUST FUND

7.1 **Member Contributions.** Subject to the limitations of this Agreement, each Member shall pay or cause to be paid contributions to the Trust at such times and in the amounts determined by the Trust Committee as are necessary to ensure funding of the Trust is sufficient, that operation of the Trust is not hazardous to the public or Participants or which the Trust Committee otherwise deems beneficial to protect the financial condition of the Trust. The Trust Committee shall establish Member contributions consistent with this Agreement, the Plan and any guidelines consistent with this Agreement and the Plan as established by the Trust Committee from time-to-time.

7.2. **Contributions on Annual Basis; Rate Structure.** The contribution rate structure for Member contributions shall provide for contributions to be made on an annual basis. Contributions shall be sufficient to fund the projected benefits and applicable expenses for the Participants receiving benefits under the Plan.

7.3 **Failure to Make Contributions.**

- (a) If any Member fails to make its Member contribution to the Trust within thirty (30) business days after the date on which they are due, such contributions shall bear interest from the date due at the rate of return for the three (3) month LIBOR rate set on the date when such contribution was first due plus one percent (1%), compounded monthly.
- (b) Any other Member may, with the consent of the Administrator, make the contribution on behalf of the delinquent Member and, such amount shall become a debt of the delinquent Member to the contributing Member.
- (c) The Trust Committee has the right, upon an affirmative vote of four (4) Trustees, with any Trustees from a Member in default excluded from the vote, should the delinquent Member not cure the delinquency within thirty (30) calendar days after the Administrator provides written notice to the Member of its delinquency, to terminate:
 - (1) such Member's participation in the Plan and Trust at the end of an additional thirty (30) calendar day notice period or the end of the Plan year of the Member's delinquency, if earlier, if such delinquency is not cured, and
 - (2) upon such termination, no claims submitted by Participants of the delinquent Member for benefits subsequent to the date of the termination, shall be paid by the Trust.
- (d) The Trust Committee also has the right, upon an affirmative vote of four (4) Trustees, with any Trustees from the Member in default excluded from the vote, to notify the Participants of such delinquent Member that such Member's participation in the Plan and Trust has been or will be terminated.
- (e) Nothing herein, however, shall relieve the delinquent Member of its responsibility for benefits payable to its Participants.

7.4 **TABOR Compliance.** This Agreement does not create a multiple fiscal year direct or indirect debt or other financial obligation. All financial obligations of a Member under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. No Member's contribution for any Fiscal Year shall exceed the annual contribution billed for such Fiscal Year unless additional funds for payment thereof have been appropriated by the Member.

7.5 **State Funding.** For benefits required under Section 29-5-302, C.R.S., no Member shall be required without its consent to make a contribution for a Fiscal Year in excess of the amount of state funding paid or payable to the Member under Section 29-5-302(11), C.R.S. for that Fiscal Year. There is reserved to the Members and to the Trust the right set forth in Section 29-

5-302(12) C.R.S., providing that if, at any time, the state funding provided for the benefit required by Section 29-5-302, C.R.S. is insufficient to cover the cost of the benefit, then the requirements of Section 29-5-302, C.R.S. to maintain the benefit shall become optional pursuant to Section 29-1-304.5. C.R.S. The Trust Committee may establish guidelines consistent with this Agreement governing any exercise of the right under said Section 29-5-302(12), C.R.S.

7.6 **Reports.** The Trust Committee shall provide reports needed for purposes of administration of this Agreement and the Plan.

ARTICLE VIII

PARTICIPATION, WITHDRAWAL AND OBLIGATIONS OF MEMBERS

8.1 **Participation in Trust by Members.** The initial participating Members in the Trust are as set forth on Exhibit A. Additional Members may participate in the Trust subject to the approval of the Trust Committee, which participation shall be effective as of the beginning of the next Fiscal Year or such other date as determined by the Trust Committee. Participation in the Trust is limited to those employers who are governmental entities participating for purposes of Part 3 of Article 5 of Title 29, C.R.S. The Trust Committee reserves the right to require a new participating Member at the time of joining the Trust to contribute to the reserves of the Trust or to make such other appropriate financial contribution as determined by the Trust Committee. The Trust Committee may reject requested participation by any additional Member for any reason. To participate in the Trust, a Member must properly adopt and enter into this Trust Agreement, which shall be evidenced by providing to the Trust Committee (i) a certified copy of the resolution or ordinance of the governing body of the Member approving and entering into this Trust Agreement, and (ii) a signed counterpart original of this Trust Agreement duly executed by presiding officer of the governing body or other authorized officer of the Member.

8.2 **Withdrawal by Member.** A Member may withdraw from participation in the entire Trust on the following terms and conditions:

- (a) Except as provided in this section, any Member which intends to withdraw from participation in the Trust must give at least ninety (90) days advance written notice to the Trust Committee. Upon a Member's withdrawal from the Trust, any Trustees who are employees of such Member shall no longer serve as Trustees.
- (b) Upon withdrawal, the Member shall be deemed to have withdrawn from participation in the entire Trust. Upon the effective date of withdrawal, the Member's Participants shall cease to participate in the Plan, provided, that if required by law, a Participant's benefits may be extended pursuant to, if and to the extent applicable, the terms and provisions of the Plan, including those Participants who have filed a claim for or are receiving benefits under the terms of the Plan prior to the effective date of the Member's withdrawal, in which case benefits shall continue subject to the withdrawing Member's payment of required contributions.
- (c) Upon withdrawal, the Trust Committee also has the right to notify the Participants

of such withdrawing Member that such Member's participation in the Plan and Trust has ceased or will cease.

- (d) In the event of a Member's withdrawal pursuant to this section, such withdrawing Member shall have no right to any of the assets, income or reserves of the Trust at any time, nor shall such Member have any right to a refund or rebate of any of its contributions to the Trust.

8.3 **Successors and Assigns.** Upon approval of the Trust Committee, a participating Member may transfer or assign its participation in the Trust to any successor in interest, whether by merger, consolidation, reorganization, restructuring, transfer of employees, or dissolution, creation or consolidation of Member entities or governing boards or otherwise.

8.4 **Powers of Members.** In addition to powers herein vested in the Members, the Members shall have the power to:

- (a) Amend the Trust Agreement by a two-thirds (2/3) vote of the Members present at a meeting. Written notice of any proposed amendment shall be provided to each Member at least forty-five (45) days in advance of any vote on the amendment.
- (b) Terminate the Plan and disburse its assets by a two-thirds (2/3) vote of all Members, pursuant to such notice and in keeping with such procedure as shall be established by the Trust Committee. In the case of such a vote, termination of the Plan shall be pursuant to provisions of Article X.

8.5 **Meetings of the Members.** Meetings of the Members shall be held as follows:

- (a) Members shall meet at least once annually at a time and place to be set by the Trust Committee, with notice mailed to each Member at least thirty (30) days in advance.
- (b) Special meetings of the Members may be called by the Trust Committee upon its own motion and shall be called by the Trust Committee upon written request of thirty (30) percent of the Members, with notice mailed to each Member at least thirty (30) days in advance.
- (c) The chair of the Trust Committee shall preside at the meetings; the vice chair shall preside in the absence of the chair.
- (d) Thirty percent (30%) percent of the Members shall constitute a quorum to conduct business.
- (e) Except for action to terminate the Plan, proxy voting shall be allowed, pursuant to such procedures as the Trust Committee may determine. Each Member shall be entitled to one vote on each issue, to be cast by its Member Representative.

8.6 **Member Obligations.** In addition to the other provisions, hereof, each Member shall have the obligation to:

- (a) Pay all contributions or other payments to the Trust at such times and in such amounts as shall be established by the Trust Committee. Any delinquent payments shall be paid with interest pursuant to a policy established by the Trust Committee and uniformly applied.
- (b) Designate in writing a Member Representative and one or more alternates for the Members' meetings. The Representative and any alternate shall be an employee of the Member, and may be changed from time to time. Any alternate may exercise all the powers of the Representative during a Member meeting in the absence of the Member Representative.
- (c) Allow the Trust Committee and Administrator and their agents reasonable access to records of the Member as required for the administration of Plan and Trust.
- (d) Cooperate fully with the Trust Committee and Administrator and their agents in matters relating to the administration of the Plan and Trust and the administration and coordination of benefits under the Plan.
- (e) Allow the Trust Committee to make decisions regarding, and to designate attorneys to represent the Member in, the investigation, settlement and litigation of any claim within the scope of benefits furnished through the Plan.
- (f) Comply with the benefits administration, claims handling and related policies established by the Trust Committee.

ARTICLE IX ADMINISTRATION

9.1 **Accounting.**

- (a) **Books and Records.** The Administrator generally shall be responsible for keeping accurate and detailed records of all investments, receipts and disbursements and other transactions hereunder, including such specific records as shall be required by law and such additional records as may be agreed upon in writing between the Administrator and the Trust Committee. All books and records relating thereto shall be open to inspection and audit at all reasonable times by any person or persons designated by the Administrator, the Member, or the Investment Committee. The Trust Committee shall promptly provide copies of such books or records to any persons designated by the Administrator.
- (b) **Accounting.** Following the close of each Plan year of the Plan, or more frequently as the Trust Committee and the Administrator may agree, the Trust Committee, with the assistance of the Administrator, shall cause to be prepared a

written statement setting forth all investments, receipts, disbursements and other transactions effected during such year or during the period beginning as of the close of the last preceding year. Except as may be required by statute or by regulations published by State or federal government agencies with respect to reporting and disclosure, as may be required pursuant to the terms of the Plan or this Agreement or as reasonably may be requested by a majority of the Members or the Investment Committee, no person shall have the right to demand or to be entitled to any further or different accounting by the Trust Committee.

- (c) **Release.** Except with regard to claims of breach of fiduciary duty, upon the expiration of 90 days from the date of presentation to the Members of such annual or other statement, the Trust Committee shall forever be released and discharged from any liability or accountability to anyone as respects the propriety of its acts or transactions shown in such account, except with respect to any acts or transactions as to which, within such 90-day period, a Member whose interest is affected by such act or transaction shall file with the Trust Committee its written disapproval. In the event such a disapproval is filed, and unless the matter is compromised by agreement of the Trust Committee, the Trust Committee shall file its statement covering the period from the date of the last annual statement to which no objection was made in any court of competent jurisdiction for audit or adjudication. The applicable statutes of limitation shall be available to the Trust Committee in the event of a claim of breach of fiduciary duty.
- (d) **Valuations.** The Trust Committee shall designate a party to be responsible for valuations of assets of the Trust for which prices are not readily available on a nationally recognized securities exchange.
- (e) **Reliance on Administrator.** The Trust Committee shall be entitled to rely on the Administrator and any Custodian, other than Trust Committee, for the maintenance and provision of all records specified in this Section.

- 9.2 **Expenses.** The expenses incurred by the Trust Committee in the performance of its duties hereunder, including fees for legal and other services rendered and all other proper charges and disbursements of the Trust Committee, including taxes of any and all kinds whatsoever, that may be levied or assessed under existing or future laws upon or in respect of the Trust or any money, property or security forming a part of the Trust Fund, shall be paid by the Trust Committee from the Trust Fund, and the same shall constitute a charge upon the Trust Fund. To the extent the Member pays any expenses that are properly payable from the Trust Fund, the Trust Committee shall reimburse the Member that has made payment from the Trust Fund if requested to do so by the Member.

ARTICLE X

AMENDMENT OF TRUST; TERMINATION OF PLAN

- 10.1 **Amendment of Trust.**

- (a) **Right to Amend.** The Members may amend this Agreement at any time or from time to time by the affirmative vote of two-thirds (2/3) of all Members, and any such amendment by its terms may be retroactive. An amendment shall require compliance with the terms of Section 8.4(a). An adopted amendment shall become effective upon the date specified in the ballot approved by the Members, without necessity of further written consent or signatures by the Members. Upon adoption of any amendment, the Trust Committee shall cause a current copy of this Agreement to be sent to each Member.
- (b) **Exclusive Benefit.** Notwithstanding the foregoing, no amendment shall be made which would authorize or permit any assets of the Trust Fund, other than such assets as are required to pay taxes and administration expenses, to be used for or diverted to purposes other than the exclusive benefit of Participants or Beneficiaries.

10.2 **Termination of Plan.** The Trust shall continue for such time as may be necessary to accomplish the purposes for which it was created and shall terminate only upon the complete distribution of the Trust. The Trust may be terminated as of any date (and shall in fact terminate upon the complete distribution of the funds of this Trust on such date or thereafter) by unanimous vote of the Trust Committee and approval by a two-thirds (2/3) vote of all Members. Upon termination of the Trust, provided that the Trust Committee has not received instructions to the contrary, the Trust Committee shall liquidate the Trust and, after paying the reasonable expenses of the Trust, including expenses involved in the termination, distribute the balance thereof according to the written directions of each Member for the provision of benefits similar to those provided under the Plan for the benefit of each such Member's Participants and Beneficiaries covered thereunder; provided, however, that the Trust Committee shall not be required to make any distribution until the Trust Committee is reasonably satisfied that adequate provision has been made for the payment of all taxes, if any, which may be due and owing by the Plan and the Trust; and provided, further, that in no event shall any distribution be made by the Trust Committee until the Trust Committee is reasonably satisfied that the distribution will not be contrary to the applicable provisions of the Plan dealing with termination of the Plan and the Trust.

10.3 **Final Accounting.** At such time as the Trust is terminated, the Trust Committee shall render a final accounting of the affairs of the Trust to each participating Member, and thereafter there shall be no claim or action against the Trust Committee or any Trustee, and they shall have no further responsibilities or duties and shall be discharged.

ARTICLE XI MISCELLANEOUS

11.1 **Nonalienation of Benefits.** Neither the benefits payable from the Trust Fund nor any interest in any of the assets of the Trust Fund shall be subject in any manner to the claim of any creditor of a Participant, or Beneficiary or to any legal process by any creditor of such Participant, or Beneficiary; and neither a Participant nor any Beneficiary shall have

any right to alienate, commute, anticipate or assign any right to benefits payable from or any interest in the Trust, except as provided in the Plan.

11.2 **Benefit.** Except as otherwise provided in the Plan and this Agreement, no part of the Trust hereunder shall be used for or diverted to any purpose other than for the benefit of Participants and Beneficiaries or the payment of expenses as herein provided.

11.3 **Effect of Plan.** The Trust Committee is not a party to the Plan, and in no event shall the terms of the Plan, either expressly or by implication, be deemed to impose upon the Trust Committee any power or responsibility other than as set forth in this Agreement. In the event of any conflict between the provisions of the Plan and this Agreement, this Agreement shall be deemed to be incorporated into and be a part of the Plan, and the terms of this Agreement shall control over any inconsistent terms of the Plan not contrary to State law.

11.4 **Dispute Resolution.**

(a) Disputes arising in relation to benefits under the Plan shall be resolved in accordance with the procedures established in the Plan.

(b) The parties to this Agreement (each, a “party”) are mutually committed to collaborative problem solving for resolving issues that may arise among or between them concerning this Agreement. In the event of a dispute, the complaining party may notify the other party of the dispute in writing and each party to the dispute will each appoint a representative to negotiate in good faith to resolve the dispute. These negotiations between representatives of the parties shall continue until the earliest of: (a) the time the dispute has been resolved; (b) the designated representatives have concluded that continued negotiation does not appear likely to resolve the dispute; or (c) thirty (30) days from the date of written notice of the dispute. If the dispute is not resolved through direct negotiations, the parties may, with the consent of all parties, attempt to settle any dispute arising out of or related to this Agreement through mediation. Unless otherwise agreed by the parties, mediation shall proceed as follows: The parties may agree on a mediator. If they are unable to agree on a mediator within thirty (30) days of the agreement to mediate, the parties shall contact an agreed upon dispute resolution organization or service and shall use its selection process to select a mediator. Each party shall bear its own costs of the mediation and the parties shall share the costs of the mediator. The mediation shall be scheduled within sixty (60) days of the agreement to mediate. If the direct negotiation process is unsuccessful and the parties do not consent to mediation or the agreed-upon mediation process does not successfully resolve the dispute within ninety (90) days of the agreement to mediate, the parties shall be entitled to pursue any other remedy allowed by law or this Agreement. However, no party shall pursue such a remedy without first exhausting the direct negotiation process.

- 11.5 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto with regard to the subject matter hereof, and there are no other agreements or understandings between the parties relating to the subject matter hereof other than those set forth or provided for herein.
- 11.6 **Approval of the Members.** The Members shall have the right, on behalf of all individuals at any time having any interest in the Trust, to approve any action taken or omitted by the Trust Committee.
- 11.7 **Liability for Predecessor or Successor.** No successor Trustee hereunder in any way shall be liable or responsible for any actions or omissions of any prior Trustee in the administration of the Trust or the Trust Fund prior to the date such successor Trustee assumes its obligations hereunder, nor shall any prior Trustee in any way be liable or responsible for any actions or omissions of any successor Trustee.
- 11.8 **Liability for Acts of Others.** No Trustee shall be liable for the acts or omissions of a Member, the Custodian, the Administrator, the Investment Committee or any Investment Manager except with respect to any acts or omissions of any such party in which the Trustee participates knowingly or which the Trustee knowingly undertakes to conceal, and which the Trustee knows constitutes a breach of fiduciary responsibility of such party.
- 11.9 **Governmental Immunity.** It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the Trust, the Trust Committee, the individual Trustees, or the Members of governmental immunity or of the sovereign immunity of the State of Colorado or its instrumentalities or any provision of the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S.
- 11.10 **Controlling Law.** This Agreement shall be construed according to the laws of the State of Colorado.
- 11.11 **Effective Date.** This Agreement shall be effective on and after _____, 2014.
- 11.12 **Execution in Counterpart.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Member and the Trust Committee have caused this Agreement to be signed by their duly authorized officers or representatives as of the day first written above.

TRUST COMMITTEE:

By: _____
Trustee

Date: _____

Member Representative of:

By: _____
Trustee

Date: _____

Member Representative of:

By: _____
Trustee

Date: _____

Member Representative of:

By: _____
Trustee

Date: _____

Member Representative of:

By: _____
Trustee

Date: _____

Member Representative of:

By: _____
Trustee

Date: _____

Member Representative of:

By: _____
Trustee

Date: _____

Member Representative of:

ADMINISTRATOR:

By: _____

Title: _____

Date: _____

MEMBER: _____

By: _____

Title: _____

Attest:

By: _____

Title: _____

Date of Member Adoption of Agreement:



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE:

Introduction, first reading and consideration of a motion to order published by title only Ordinance No. 8029 designating the building and property at 747 12th St., to be known as the **Cowgill Property**, as an individual landmark under the city's Historic Preservation Ordinance.

Owner/Applicant: 747 Twelfth Street, LLC

PRESENTERS:

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Deputy Director of Community Planning & Sustainability
Debra Kalish, Senior Assistant City Attorney
Lesli Ellis, Comprehensive Planning Manager
James Hewat, Senior Historic Preservation Planner
Marcy Cameron, Historic Preservation Planner

EXECUTIVE SUMMARY:

The purpose of this quasi-judicial hearing is to allow the City Council to determine whether the proposed individual landmark designation of the property at 747 12th St. meets the purposes and standards of the Historic Preservation Ordinance (*Sections 9-11-1 and 9-11-2, B.R.C. 1981*), in balance with the goals and policies of the Boulder Valley Comprehensive Plan, including that:

1. The designation will 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.
2. The designation will 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.
3. Landmark designation is not intended 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 setting, not by imitating surrounding structures, but by being compatible with them.

If approved, this ordinance (see **Attachment A**) would designate the house, garage and property as an individual landmark. This designation, initiated by the Landmarks Board, is opposed by the property owners. On October 1, 2014, the Landmarks Board passed a resolution to initiate landmark designation pursuant to § 9-11-3, *Initiation of Designation for Individual Landmarks and Historic Districts*, B.R.C. 1981, finding that it met the criteria for Individual Landmark Designation. The designation hearing was held by the Landmarks Board on January 7, 2015. The board voted (4-0, F. Sheets absent) to recommend the designation to City Council. The second reading for this designation will be a quasi-judicial public hearing.

Suggested Motion Language:

Staff requests the City Council's consideration of this matter and action in the form of the following motion:

Motion to introduce and order published by title only an ordinance designating the property at 747 12th St., to be known as the Cowgill Property, as an individual landmark under the City of Boulder's Historic Preservation Ordinance.

FINDINGS

The City Council finds, based upon the application and evidence presented, that the proposed designation application is consistent with the purposes and standards of the Historic Preservation Ordinance, in balance with the goals and policies of the Boulder Valley Comprehensive Plan, and:

1. The proposed designation will protect, enhance, and perpetuate a building reminiscent of a past era and important in local and state history and provide a significant example of architecture from the past. Sec. 9-11-1(a), B.R.C. 1981.
2. The proposed designation will maintain an appropriate setting and environment and will enhance property values, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage. 9-11-1(a), B.R.C. 1981.
3. The buildings proposed for designation have exceptionally high architectural, historic and environmental significance. The property is associated with Marthana and Josephine Cowgill, who cared for tuberculosis patients in the house prior to purchasing the Mesa Vista Sanatorium; the property possesses a high level of architectural integrity as an example of architecture of that period, and the property has been identified as contributing resource to the identified potential University Hill local and National Register of Historic Places District. Sec. 9-11-2(a)(1), B.R.C. 1981.
4. In this case, designation over an owner's objection is appropriate because (i) the house and garage are of exceptionally high architectural, historic, and environmental significance; (ii) the house and garage are in need of protection provided through the designation as the buildings are proposed for demolition; and (iii) it has not been demonstrated that the cost of restoration or repair would

be unreasonable or that it would not be feasible to preserve the buildings and incorporate them into future development plans.

5. The proposed designation draws a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings important to that heritage will be carefully weighed with other alternatives. Due to the location of the house on the south side of the lot, and the gradual grade change away from the house, redevelopment of the site in a manner that preserves the historic buildings and provides for a modern residential use will be possible if the property is individually landmarked. 9-11-1(b), B.R.C. 1981.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

Economic: Owners of locally designated landmarked properties are eligible for state and local tax credits for approved rehabilitations and repairs, and studies have found that historic preservation adds to economic vitality and tourism. Exterior changes to individually landmarked buildings require a Landmark Alteration Certificate, issued by the Community Planning and Sustainability Department at no charge. The additional review process for landmarked buildings may, however, add time and design expense to a project.

Environmental: The preservation of historic buildings is inherently sustainable. Owners of individually landmarked buildings are encouraged to reuse and repair as much of the original building as possible when making exterior alterations, thereby reducing the amount of building material waste deposited in landfills. City staff can assist architects, contractors and homeowners with design and material selections and sources that are environmentally friendly. Also, the city's 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 January 7, 2015, the Landmarks Board voted (4-0, **F. Sheets** absent) to recommend to City Council that the property at 747 12th St., to be known as the Cowgill Property, 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.

Staff recommended that the Landmarks Board recommend landmark designation for the property.

PUBLIC FEEDBACK

The property is owned by the 747 12th St., LLC, which is comprised of members of the Johnson family who have owned the property since 1970. The property owners and applicant oppose the landmark designation.

At the Jan. 7, 2015 Landmarks Board meeting, comments from the owner's representative included that the property does not possess architectural, historic or environmental significance, and that the Cowgill sisters later resided at 2107-2109 Bluff St. and that they also took in boarders there. He stated that the Cowgills built the Terrace-style building and that the building was more conducive to caring for tubercular patients as the porch extends the width of the façade.

At the Jan. 7, 2015 Landmarks Board meeting, twelve members of the public spoke to the item. Six members of the public, most of whom live in the immediate area, spoke in support of the landmark designation. A representative of Historic Boulder, Inc. also spoke in support of landmark designation. Five members of the public, including two of the property owners and the potential buyer, spoke in opposition of the designation. The board received four letters expressing opposition to landmark designation prior to the hearing.

At the demolition hearing at the Sept. 3, 2014 Landmarks Board hearing, four neighbors spoke in opposition to the demolition of the house and presented a letter in support of its preservation signed by 51 Boulder residents.

BACKGROUND:

On January 7, 2015, the Landmarks Board voted 4-0 (F. Sheets absent) to recommend to City Council that the building at 747 12th St. 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. Prior to the designation hearing:

- On Mar. 19, 2014, the applicants submitted a demolition permit application to demolish the house and garage at 747 12th St.
- On Mar. 26, 2014, the Landmarks design review committee (Ldrc) referred the application to the Landmarks Board for a public hearing, finding there was “probable cause to believe that the property may be eligible for designation as an individual landmark.”
- On June 4, 2014, the Landmarks Board imposed a stay-of-demolition for a period of up to 180 days in order to seek alternatives to the demolition of the house and garage.
- During the stay-of-demolition, staff and representatives of the Landmarks Board and Historic Boulder, Inc. met with the applicant and owner on several occasions to discuss alternatives to the demolitions, including landmarking, the use of historic preservation tax credits for rehabilitation, and the possibility of constructing an addition to the main house. During these meetings, the applicants indicated they did not consider the buildings historically or architecturally significant and are were not interested in preserving the buildings.
- On Oct. 1, 2014, the Landmarks Board passed a resolution to initiate landmark

designation for the property located at 747 12th St. pursuant to § 9-11-3 , *Initiation of Designation for Individual Landmarks and Historic Districts*, B.R.C. 1981, finding that it met the criteria for Individual Landmark Designation.

- The property needs the protection of the preservation ordinance, as the house and garage are proposed for demolition.
- It has not been demonstrated that it would be unfeasible or cost prohibitive to preserve the house and incorporate it into future development plans.
- Because of its exceptional significance and that the proposal would result in the loss of a very important piece of the Boulder’s heritage, staff and the Landmarks Board found that, in this case, designation over the owner’s objection would be consistent with Section 9-11-1(b) of the historic preservation ordinance, as redevelopment of the site in a manner that preserves the historic buildings and provides for a modern residential use will be possible if the property is individually landmarked.

PROPERTY DESCRIPTION:

The approximately 12,500 sq. ft. property is located on the west side of the 700 block of 12th Street, between Baseline Rd. and Cascade Ave. and located in the identified potential University Hill Historic District (potentially eligible at the local level as well as on the National Register of Historic Places).

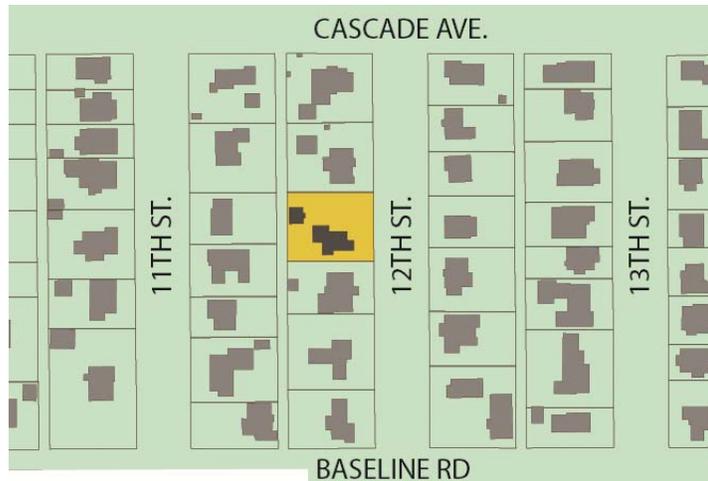


Figure 1. Location Map showing 747 12th St.

The one-story blonde brick main house at 747 12th St. was constructed in 1916 and features a pyramidal hipped roof with overhanging eaves and off-center, open front porch with solid brick walls and brick pillar supports on the east facing facade. The porch is accessed by a set of stairs on the north side, with the front door centered and a group of three, one over one, double-hung windows located to its right. Window surrounds on the house include brick sills. The building rests on a rough faced stone foundation.



Figure 2. Façade, 747 12th St, 2014.



Figure 3. Façade, 747 12th St, 2014.

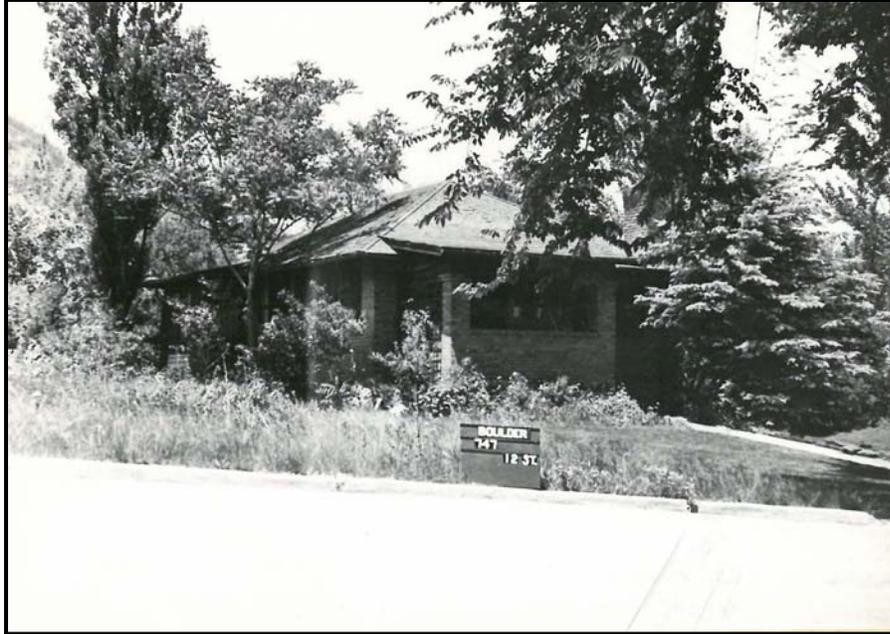


Figure 4. Façade, 747 12th St, c.1949

The north (side) elevation of the house features a small gable-roofed projection with a large brick corbelled chimney and a group of three windows at the basement and first levels. One-over-one, double-hung windows behind non-historic metal storm windows on all faces of the house appear to be historic.



Figure 5. Bay window and chimney at north elevation, 747 12th St, 2014.



Figure 6. North (side) elevation of house, 747 12th St., 2014



Figure 7. West (rear) Face of House, 747 12th St., 2014

The west (rear) elevation features a low gable roofed addition that is clad in wood shingles. The exact date of construction of the addition is unknown, but it appears on the c. 1938 tax assessor card and is typical of 1920s construction, with wood double-hung windows and wood shingles. A fieldstone chimney is located on the north side of the addition.



Figure 8. West (rear) Face of House, 747 12th St., 2014



Figure 9. Bay window and rear porch at south elevation, 747 12th St., 2014.



Figure 10. West elevation (facing alley) of garage, 747 12th St., 2014.

The south elevation features a bay window with corbelled brick, and two groupings of three double-hung windows, similar to the north elevation. A wooden porch wrapping from the west end of the south face to the west side of the house differs in fenestration from the main body of the house with nine-light casement windows set behind either wood or aluminum storm windows.



Figure 11. East elevation (facing 12th St.) of garage, 2014.

A brick, hipped roof garage is located at the rear of the lot, along the alley. Constructed in 1929, the simply detailed accessory building features over-hanging eaves, exposed rafter tails, and large one-over-one windows on the south and east elevations. A pair of two large

wooden double-hung windows are located on the south (side) elevation with the east elevation (facing 12th St.) featuring a centrally-located wooden paneled door flanked by two double-hung windows with brick sills. A small gable-roofed portico is located above the entrance. Permit research indicates that in 1938 under the ownership of Dr. Oscar Gilbert, a request to convert the garage into living space was denied by the City of Boulder. The garage is identified as an associated building on the Historic Building Inventory Form (1991) and as potentially contributing to a National Register and local historic district on the Cultural Resource Re-evaluation Form (2001).

The house and garage appear to remain largely intact from their original construction with the frame addition at the rear of the house constructed prior to 1938. Building permit records and on-site inspection of the house and garage do not indicate additional changes, other than the installation of aluminum storm windows.



Figure 12. 700 block of 12th St., facing north, 2014.





Figure 13. Examples of houses on the 00 block of 12th St., 2014
(L-R: 707 12th St., 750 12th St., 740 12th St., and 728 12th St.)

The lot slopes to the north and features mature landscaping, including a very large pine tree at the front of the house. The 700 block of 12th St. is notably intact, with examples of an eclectic mix of architecture of the 1910s to the 1930s, including Tudor Revival, Colonial Revival and Craftsman Bungalow houses. Three houses on the block, including one that has been designated as an individual landmark, were designed by noted Boulder architect Glen Huntington. Many of the properties on the block are associated with significant figures to Boulder’s history. In addition to the Cowgills, the block was also home to faculty members of the University of Colorado, prominent businessmen and socialites. The 2001 Re-Survey identified buildings that would be contributing and non-contributing to a potential National or Local historic district. 12 of the 14 (85%) primary buildings on the 700 block of 12th St., including the house at 747 12th St., were considered to be contributing to a potential district. The accessory building at 747 12th St. was the only one of the six accessory buildings on the block found to be potentially contributing. Little change appears to have occurred in the past twelve years to affect the historic integrity of the district.

PROPERTY HISTORY

The house at 747 12th St. was purchased shortly after construction in 1916 by Samuel Cowgill for his daughters Marthana and Josephine, who resided there for sixteen years, from 1916 until 1932. They sold the property to Dr. Oscar Gilbert in 1936. The Cowgills and Dr. Gilbert are associated with the Mesa Vista Sanatorium, which provided care for tubercular patients from its establishment in 1918 through the 1960s.

As noted in the Public Feedback section, the applicant’s testimony at Jan. 7, 2014 Landmarks Board hearing suggested that the Cowgills resided at 2107-2109 Bluff St. after moving from 747 12th St. and that that property had a stronger association with the Cowgills. A 1967 article notes that the Cowgills “operated a nursing home at their residence at 747 12th St. and later at 2107-09 Bluff St., however, there is no evidence that the Cowgills lived at the house on Bluff St.”¹ City directory research indicates that after moving from 12th St., the Cowgills resided at 2121 North St. (Mesa Vista Sanitarium) from 1932 until 1951 and at 2048 Alpine Ave. from 1953 until their deaths in the 1960s. Further, the Bluff St. residence was constructed before 1911, prior to the Cowgill’s ownership. It does not appear to have been altered by the Cowgills during their ownership and the front porch is typical of that building

¹ Miss Marthana Cowgill Dies After Long Illness. *Daily Camera*. 7 March 1967.

type. The building was recognized as a Structure of Merit in 1989 as a representative example of the Terrace architecture in Boulder.

While there are other properties in Boulder that are also associated with the theme of health seekers, the property at 747 12th St. is proposed for demolition and is particularly significant for its association with the Cowgill sisters and Boulder's tuberculosis history. It was the first house the Cowgills owned in Boulder, there is evidence that they took in tuberculosis patients in the home prior to operating the Mesa Vista Sanitarium, and that use is expressed in the building's form with rear and side porches added by the Cowgills in the 1920s. Detailed research and analysis indicates the property possesses exceptional architectural and historic significance and integrity, is an important example of early twentieth century architecture modified to function as a convalescent home for tuberculosis patients in the 1920s and is associated with the Cowgill family, which made a significant contribution to the care of tuberculosis patients in Boulder. The Landmarks Board found the property to be of exceptionally high architectural and historic integrity and eligible for individual landmark designation pursuant to Section 9-11-1(a), B.R.C.1981.

The Cowgill Sisters and the Mesa Vista Sanatorium²

Tuberculosis was one of the most common and deadly diseases in the 19th and early 20th centuries. With no identified drug or vaccine, doctors encouraged patients to seek healthier climates, noting that rest, fresh air and a good diet would help strengthen the body's defenses. In the late 19th century, tuberculosis sanatoriums were established across the country. The Battle Creek Sanitarium in Michigan, founded by Dr. John Harvey Kellogg and the Seventh Day Adventists, was one of the most influential.

In 1896, the Boulder-Colorado Sanitarium, a branch of the Battle Creek Sanitarium, opened. First located on University Hill, facilities were soon constructed at 4th and Mapleton Ave. The institution was initially founded to care for tuberculosis patients, but it was "soon found that this was a handicap to the work, for other patients were often afraid to come because of their dread of this disease."³ To meet the need of a tuberculosis facility, smaller treatment centers were opened. In 1918, Dr. Gilbert, a nationally-recognized expert on the disease, founded the Mesa Vista Sanatorium at 2121 North St. (now 2121 Mesa Ave.) specifically for the care of tuberculosis patients. In 1931, Dr. Gilbert sold the facility to Marthana and Josephine Cowgill, who operated the sanatorium until their deaths in the 1960s.

Josephine (b. 1878) and Marthana (b. 1885) Cowgill were born in Cadiz, Indiana, to Samuel C. and Carolyn Macy Cowgill. Samuel owned a number of successful drain tile factories across the country and family later moved from Indiana to San Benito, Texas. The Cowgills had four daughters and two sons, all of whom graduated from Earlham College, a Quaker liberal arts college in Richmond, Indiana.

² *Sanatorium* refers to a hospital designed for treatment of a specific disease. *Sanitarium* refers to a health resort. The terms can be used interchangeably in modern terminology. www.lawprose.org

³ Brief History –Boulder, Colorado Sanitarium. Carnegie Library for Local History. Accessed 19 December 2014. <http://www.boulderlibrary.org/cpdfs/328-145-18.pdf>

During World War I, Josephine pursued a nurse's training program, becoming a registered nurse. Marthana had been a school teacher in Texas until she contracted tuberculosis. According to an interview with Marthana's son, Dr. Joseph Cowgill, Marthana, each of her five siblings, and her parents all contracted the disease at some point in their lives. Marthana's condition was considered severe and in 1915 she traveled to Boulder to stay at the Alps, a summer resident hotel in Boulder Canyon. Soon after, her sister Josephine was sent to the Alps to help care for her.

In 1920, Josephine received a degree from the University of Colorado Nursing School. Following Marthana's recovery, the sisters began operating a convalescent home at their residence at 747 12th St. and later 2107-09 Bluff St.⁴ A 1951 newspaper article about the history of the Mesa Vista Sanatorium notes that the "after the financial difficulties suffered by their father in the 1920-21 depression, [the Cowgill sisters] decided to rent out rooms in their home to other tuberculosis sufferers."⁵ In Dr. Cowgill's interview, he stated that there were about four or five patients that lived at 747 12th St. during this time. In addition to taking care of patients, Josephine began working as an office nurse for Dr. Oscar M. Gilbert at the Mesa Vista Sanatorium.⁶

In the 1920s, Marthana adopted two boys, David and Joseph. Marthana and Josephine also cared for two children of their sister, Louise Whitney, who had died of tuberculosis some years earlier. Later, the sisters also adopted Bergen, an orphaned son of one of their patients. The Cowgill family was active in the Quaker community in Boulder and is cited in a 1960 article as the "backbone of the current Quaker fellowship."

In 1930, Marthana and Josephine took over the management of Mesa Vista Sanatorium from Dr. Gilbert. Dr. Cowgill explained in his interview that during the Great Depression Marthana and Josephine traded the property at 747 12th St. for the sanatorium. After the trade, Marthana, Josephine, and the two boys moved into an old barn-turned-residence that was located on the Mesa Vista property.⁷

Marthana served as president and owner of the sanatorium while Josephine acted as vice president and superintendent of nurses. In 1933, their sister Mary moved to Boulder from Texas and joined the business as secretary-treasurer. During WWI, Dr. Gilbert was enlisted in the military and served as a contract surgeon with the rank of captain. He had retired to consulting practice, but in Sept. 1942, he returned to active practice because of the need at that time for physicians to replace those going into military service. Dr. Gilbert remained associated with the Mesa Vista Sanatorium until he died of a heart attack in 1944. His obituary notes that he was "one of Colorado's most widely known physicians and one of Boulder's most prominent citizens."⁸

⁴ Miss Marthana Cowgill Dies After Long Illness. *Daily Camera*. 7 March 1967.

⁵ Mesa Vista Sanatorium Purchased by The Misses Cowgill In 1930. *Daily Camera*. 13 December 1951.

⁶ Joseph Cowgill, interview by Sue F. Lacey.

⁷ Joseph Cowgill, interview with Sue F. Lacey.

⁸ Dr. O. M. Gilbert Dies in Sleep Early Today. *Daily Camera*. 18 Oct. 1944.



Figure 12. Photograph of Sun Porch at 2121 North St. from Mesa Vista Sanatorium Brochure, c. 1930.



Figure 13. Photograph advertising “one of five bed porches” in a Mesa Vista Sanatorium Brochure, c. 1930.

With the advent of penicillin and the resulting decline of tuberculosis cases after World War II, the Cowgill sisters devoted the institution to treating tuberculosis among the Navajo tribe beginning in 1952. Funding became available through the Bureau of Indian Affairs and Dr. Joseph Cowgill noted that Mesa Vista was the only sanatorium outside of New Mexico that primarily cared for Navajo patients. Members of the Navajo tribal council frequently visited the Mesa Vista Sanatorium. Dr. Cowgill talks briefly in his interview about how Marthana became good friends with Annie Wauneka, a highly influential member of the Navajo tribe.⁹ Wauneka’s 1997 obituary posted in the *New York Times* states that she “received much of the credit for defeating tuberculosis among the Navajo beginning in the 1950s and received national recognition for her role.”¹⁰

⁹ Joseph Cowgill, interview with Sue F. Lacey.

¹⁰ “Annie d. Wauneka, 87, Dies; Navajo Medical Crusader,” *New York Times* (New York City, NY), Nov 16, 1997.



Figure 13. Navajo children and Ms. Marthana Cowgill at Mesa Vista Sanatorium, c.1950s

By the 1960s, the institution began to expand its services to take care of all types of chronically ill patients, and in 1964 the sanatorium underwent extensive modernization and construction of an addition. The facilities still exist today, and operate as the Terrace Heights Care Center.



Figure 14. "The Cowgill Sisters – The Misses Mary, Josephine and Marthana." Daily Camera, July 15, 1960.

The Cowgill sisters never married. Dr. Cowgill became a prominent Boulder physician, a founding member of the Boulder Medical Center and later vice president of Mesa Vista Sanatorium. Bergen died in the 1950s, and David in the mid-1960s. Josephine died February 1, 1960, and was followed by her sister Mary almost a year later. Marthana died March 7, 1967.

The Cowgill sisters made a significant contribution to the treatment of tuberculosis in Boulder. The roots of their efforts can be traced to the property at 747 12th St., where they lived and operated a treatment home in the 1920s. The use as a treatment facility is expressed through its architectural form, with porches constructed at the rear and sides of the house with pocket windows to allow fresh air for the patients. The Mesa Vista Sanatorium, as well as the Boulder-Colorado Sanitarium, were major institutions in Boulder and drew many visitors and residents to Boulder.

Subsequent Residents of 747 12th St.

In 1940, Dr. Gilbert sold to Ralph and Dorothy Feather. Ralph attended the University of Colorado in 1938 and in 1940 worked as a janitor in an office building. The Feathers had three children, Gilbert, Gaynor and Kenneth.

In 1944, the property then passed to Lucile Tandy, who resided there until 1968. Lucile May (née Morrison) Tandy was born 1893 in Rockford, Illinois. She graduated from the University of Colorado in 1917 and also attended the Chicago Institute of Fine Arts. She married Ben G. Tandy in 1918 Worcester, Massachusetts. Her husband died in 1943 and the following year she moved to Boulder from Grand Junction. She was employed as a teacher in various Colorado locations including Louisville, and was a member of the Colorado Education Association, and attended the First Baptist church of Boulder. Lucile died October 2, 1986.

Subsequently, the property passed from Mrs. Tandy to Rex Sheppard, who owned it from 1968 until 1970. From 1970 until 2013, the property was owned by Orval and Nina Johnson. It is currently owned by members of the Johnson family.

The 1991 Historic Building Inventory Form for 747 12th St. identified the main house on the property as being architecturally significant representing a type, period or method of construction, and historically significant for its association with significant persons and events or patterns. The garage is identified as a contributing feature of the property. The 2001 Re-survey indicated the buildings would be contributing to a potential local or National Register historic district, but would not be individually eligible at the local or national level.

ANALYSIS

Code Criteria for Review

Section 9-11-6(b), *Council Ordinance Designating Landmark of Historic District*, B.R.C. 1981, specifies that in its review of 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 Landmarks and Historic Districts*, B.R.C., 1981, in balance with the goals and policies of the Boulder Valley Comprehensive Plan. The city council shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation.”

Section 9-11-1, *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 Preservation Advisory Board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled, and creative approaches to renovation.

Section 9-11-2, City Council may Designate 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.

Significance Criteria.

To assist in the interpretation of the historic preservation ordinance, the Landmarks Board has adopted significance criteria to use when evaluating applications for individual landmarks. The criteria are included in *Attachment A: Significance Criteria*. An evaluation of the property's significance in relation to the significance criteria is as follows:

Historic, Architectural, and Environmental Significance

A. Does the proposed application protect, enhance, and perpetuate 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?

The Landmarks Board has found that the proposed application would perpetuate a building and site of the city reminiscent of past eras and persons important in local history. The property has a strong association with evolving health care in Boulder during the 1910s through the 1950s in Boulder, particularly in the treatment and care of tuberculosis patients, many of whom came to Boulder specifically for health reasons. The board considers that the application meets the historic and architectural criteria for individual landmark designation as outlined below.

Historic Significance:

Summary: The house located at 747 12th St. is historically significant under criteria 1, 2 and 4.

1. Date of Construction: 1916

Elaboration: Tax Assessor records indicate that the building was constructed in 1916.

2. Association with Persons or Events: Josephine and Marthana Cowgill

Elaboration: Josephine and Marthana Cowgill, two sisters who operated a tuberculosis sanitarium in Boulder. The house functioned as a convalescent home for tuberculosis patients during the 1920s. From 1930 until the 1960s, the Cowgills owned and operated the Mesa Vista Sanatorium. It is possible and quite likely that the rear porches were constructed during this period to provide outdoor areas for consumptive patients.

3. Development of the Community: Following the Civil War, and construction of the railroads, mountain communities around the country including Boulder, were popular destinations for the treatment of tuberculosis patients and other visitors hoping to improve their health. Opened in 1896, the Boulder Sanitarium stopped accepting tuberculosis patients after WWI citing concerns about contagion to other patients. Apparently responding to a shortage of treatment alternatives to consumptives in Boulder the Cowgill sisters, began taking consumptive convalescents into their house at 747 12th St. beginning about 1920. In association with nationally noted physician Dr. Oscar Gilbert, the Cowgills continued nursing TB patients at the house until 1930 when they took over ownership and management of the Mesa Vista Sanitarium. In 1934, Gilbert bought the house which he sold in 1940. The Cowgill's adopted son Joseph went on to become a doctor and assistant director of Mesa Vista Sanitarium. For more than 50 years the Cowgill family and Dr. Gilbert engaged in innovative treatments of tuberculosis including those that took place at the Boulder-Colorado Sanitarium, 747 12th St. and the Mesa Vista Sanitarium. These efforts represent an important element of Boulder's twentieth-century history and development. The property at 747 12th St. survives as a well preserved reminder of this chapter of the city's past.

4. Recognition by Authorities: Historic Building Survey

Elaboration: The 1991 Historic Building Inventory Form indicates that the house at 747 12th St. is architecturally significant as it represents a type, period or method of

construction, and historically significant as it is associated with significant persons and significant events or patterns. The form states:

This house is significant for its association with Josephine and Marthana Cowgill, two sisters who operated a tuberculosis sanitarium in Boulder. The house functioned as a nursing home, probably for tuberculars, during the 1920s. The house is a well-preserved example of the Bungalow style popular during the early twentieth century, as typified by its hipped roof, brick walls, double-hung windows, and porch with brick pillars and walls.

No changes appear to have taken place to the buildings since the survey was undertaken. The 2001 Re-survey form indicates that the property would be contributing to a potential local or National Register historic district, but would not be individually eligible for listing at the local or national level. The basis for the 2001 determination is unclear. Staff considers that the property meets the significance criteria for individual landmark designation at the local level in terms of architectural, historic and environmental significance.

Architectural Significance:

Summary: The house located at 747 12th St. is architecturally significant under criterion 1.

1. Recognized Period or Style: Bungalow

Elaboration: The house is an unusually well-preserved example of bungalow influenced house construction popular during the early twentieth century, as typified by its hipped roof, brick walls, double-hung windows, and porch with brick pillars and walls. Of particular interest is the use of blonde brick, corbelling at the south bay and north faces, construction of the enclosed rear and side porches of the house indicating early adaptive changes to the building, presumably, in response to use of the house as a convalescence home for consumptive during the 1920s. The garage appears to have been constructed somewhat later than the main house. Both the house and garage appear to be essentially unaltered from their original construction.

2. Architect or Builder of Prominence: None observed.

3. Artistic Merit: None observed.

4. Example of the Uncommon: None observed.

5. Indigenous Qualities: None observed

B. Does the proposed application 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?

The Landmarks Board found that the proposed application would maintain an appropriate setting and environment for the buildings. The property is located within the identified

boundaries of the potential University Hill Historic District of which the 700 block of 12th Street represents one of the best preserved areas of University Hill.

Environmental Significance:

Summary: The house located at 747 12th St. meets environmental significance under criteria 1, 2 and 5.

1. **Site Characteristics:** The house sits on a large lot with mature landscaping, including large pine trees.
2. **Compatibility with Site:** The buildings are representative of the typical building patterns in University Hill and contribute to the residential character of the neighborhood.
3. **Geographic Importance:** None observed.
4. **Environmental Appropriateness:** None observed.
5. **Area Integrity:** The 700 block of 12th Street is located in the identified potential University Hill Historic District and retains a high degree of historic integrity to the original development of that neighborhood. The block is notably intact, with examples of an eclectic mix of architectural styles characteristic of the 1910s to the 1930s, including Tudor Revival, Colonial Revival and Craftsman Bungalow houses. Three houses on the block, including one that has been designated as an individual landmark, were designed by noted Boulder architect Glen Huntington. Many of the properties on the block are associated with significant figures to Boulder's history. In addition to the Cowgills, the block was also home to faculty members of the University of Colorado, prominent businessmen and socialites.

C. Does the proposed application 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?

The Landmarks Board has found that this application draws a reasonable balance between private property rights and the public's interest in preserving the city's cultural, historic, and architectural heritage. The property has exceptional historic significance through its association with the Cowgill sisters and the evolution of the care of consumptives in Boulder. Two generations of Cowgills were directly involved in this often overlooked chapter of history that saw momentous changes from the chronic care of consumptive patients, to cure of tuberculosis with the advent of penicillin, to direct and effective efforts to eradicating the disease in the Navajo Nation. To this extent, the property represents a direct link to the Cowgill sisters, Dr. Oscar Gilbert and Dr. Joseph Cowgill.

During the stay-of-demolition, staff and representatives of the Landmarks Board and Historic Boulder, Inc. met with the applicant and owner to discuss alternatives to the demolitions, including landmarking, rehabilitation, and the possibility of constructing an addition to the main house. The applicants have indicated they do not consider the buildings historically or architecturally significant and are not interested in preserving them. It has not been

demonstrated that the cost of rehabilitation and the incorporation of the buildings into future development plans would be unreasonable. The house is located on the southern portion of the lot, which slopes to the north. This configuration would allow for an addition to the north that would not overwhelm the existing house. No major structural issues have been identified, and it has not been demonstrated that the cost of rehabilitation or restoration would be unreasonable. Considerable community support for the proposed designation has been expressed through the demolition review process.

At the June 4, 2014 meeting, Historic Boulder, Inc. spoke in support of imposing a stay on the property to explore alternatives to the demolition. The Landmarks Board has received letters from five neighboring property owners in support of the stay of demolition, and seven neighbors spoke against the demolition of the buildings at the June 4th Landmarks Board meeting.

Four neighbors spoke in opposition to the demolition of the house at the Sept 3rd Landmarks Board hearing and presented a letter in support of its preservation signed by 51 Boulder residents. Oct. 1st meeting, three neighbors spoke in support of landmark designation. In September 2014, an application for historic district designation for the 700 block of 12th St. was received but later withdrawn due to lack of support from the property owners. One property owner has indicated that they will submit an application for individual landmark designation for their property.

In the history of the historic preservation program, individual landmark designations over the owner's objection have occurred very rarely.

Of the 168 designated individual landmarks since 1980 (1974 to 1979 records do not clearly identify the initiator), 157 were initiated by the property owner. Four were initiated by Historic Boulder, one by the Modern Architecture Preservation League (Bandshell), and six by the Landmarks Preservation Advisory Board. Of these designations, five are known to have been initially over the owner's objection:

- 1980: 2032 14th Street – Boulder Theater
- 1990: 646 Pearl St – Arnett-Fullen House
- 1998: 1949 Pearl Street – Campbell Grocery
- 2007: 1936 Mapleton Avenue – Frakes House
- 2007: 3231 11th Street – Chambers Cottage

The historic preservation code states that its purpose is to draw a “reasonable balance between private property rights and the public interest.” In this case, staff considers that initiating landmark designation for this property may be appropriate, as the property possesses exceptional historic and architectural significance of state and local significance. At the same time, it has not been demonstrated that the buildings' incorporation into future development plans would be unreasonable.

The house is located on the south side of the lot, and the grade slopes gradually to the north, allowing for an addition that preserves the mass, scale, location and character-defining features of the house and also accommodates addition space desired for a modern residence. Character-defining features of the house include the hipped roof, blond brick with corbel

details, and the rear porches. An addition that is sympathetic to the historic character of the house could be approved through Landmark Alteration Certificate review if the house were landmarked. For instance, constructing a substantial addition at the north side of the house would likely be feasible if it was setback from the front corner of the historic portion of the house.

OPTIONS:

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

Approved By:

Jane S. Brautigam,
City Manager

ATTACHMENTS:

- A: Ordinance No. 8029
- B: Sections 9-11-1 and 9-11-2, "*Purposes and Intent*," B.R.C., 1981
- C: Significance Criteria for individual landmarks

ORDINANCE NO. 8029

AN ORDINANCE DESIGNATING THE BUILDINGS AND PROPERTY AT 747 12TH ST., CITY OF BOULDER, COLORADO, ALSO KNOWN AS THE COWGILL PROPERTY, 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 1, 2014, the Landmarks Board passed a resolution to initiate landmark designation for the property at 747 12th St. 2) the Landmarks Board held a public hearing on the proposed designation on January 7, 2015; and 3) on January 15, 2015, 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 3, 2015 and upon the basis of the presentations at that hearing finds that the building and the property at 747 12th St. 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 the Cowgill family, who opened a convalescent home for tuberculosis patients and later operated the Mesa Vista Sanatorium, and for its association with the development of Boulder; and 2) its

1 architectural significance indicative of an example of a bungalow influenced house, and; 3) its
2 environmental significance for its location within the potential University Hill Historic District,
3 which retains its residential historic character.

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

6 Section 6. There is hereby created as a landmark the building and property located at 747
7 12th St., also known as the Cowgill Property, whose legal landmark boundary encompasses a
8 portion of the legal lots upon which it sits:

9 LOTS 35-38 INC BLK 32 UNIVERSITY PLACE

10 as depicted in the proposed landmark boundary map, attached hereto as Exhibit A.

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

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

17
18 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE
19 ONLY THIS 3RD DAY OF FEBRUARY, 2015.

20
21 _____
22 Mayor

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Attest:

City Clerk

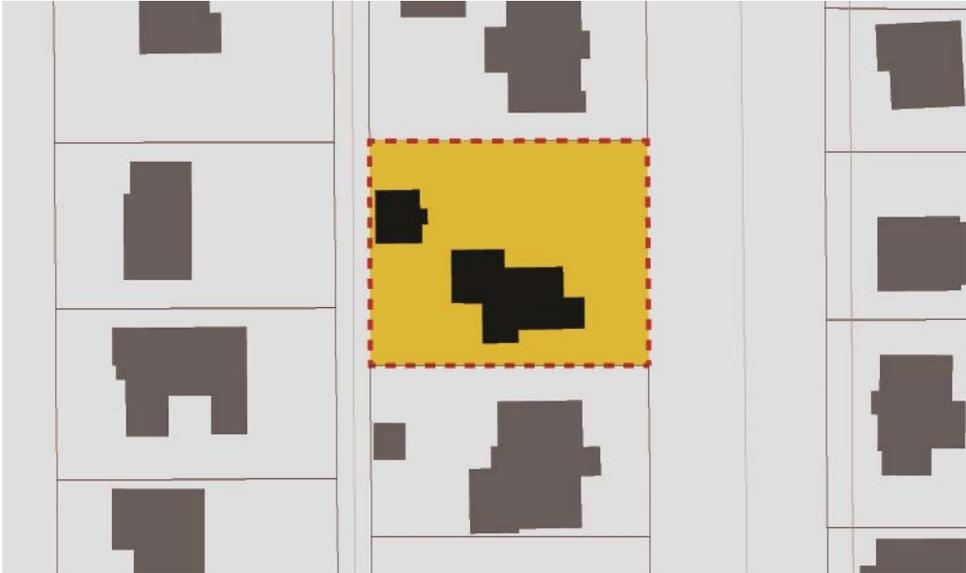
READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY
TITLE ONLY THIS 3RD DAY OF MARCH, 2015.

Mayor

Attest:

City Clerk

Exhibit A – Landmark Boundary Map for 747 12th St.



LOTS 35-38 INC BLK 32 UNIVERSITY PLACE

**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.

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 3, 2015

AGENDA TITLE: Consideration of a motion authorizing the city manager to enter into a settlement agreement in the litigation brought against the city by Danielle Gower and Carol Stimmel.

PRESENTER/S

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Greg Testa, Chief of Police
Bob Eichem, Chief Financial Officer
Stewart Ellenberg, Risk Manager

EXECUTIVE SUMMARY

This matter arises out of a lawsuit brought against the city by plaintiffs Danielle Gower and Carol Stimmel. The lawsuit arises out of a traffic accident between a patrol car driven by a city police officer and automobiles driven by Ms. Gower and Ms. Stimmel.

If City Council approves, the parties have agreed to settle all claims for a proposed payment of \$43,500 to the plaintiffs and dismissal of the city. The city manager and city attorney recommend approval of the settlement. The police chief also supports this settlement proposal.

Because the amount of the proposed settlement exceeds \$10,000, City Council approval of the proposed settlement is necessary pursuant to 2-2-14 (c) B.R.C., 1981.

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 an agreement to settle the lawsuit brought by Danielle Gower and Carol Stimmel by payment from the city to Ms. Gower of \$15,500 and to Ms. Stimmel of \$28,000 for a total settlement of \$43,500.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Not applicable.
- Environmental: Not applicable.
- Social: The resolution of disputes is generally of social benefit and the resolution of this dispute will free up city attorney time to work on other projects.

OTHER IMPACTS

- Fiscal-Budgetary: Payment for the proposed settlement will be made from the city’s Property and Casualty Fund which was established and funded for the purpose of paying claims and settling cases. This settlement is within the city’s anticipated loss planning parameters.
- Staff Time: The city attorney’s office represents the city in this matter. It will be necessary to retain outside counsel if this matter is not resolved. Outside counsel mitigates the impact on staff time. The city estimates that outside counsel fees could exceed the amount of the settlement.

BOARD AND COMMISSION FEEDBACK:

None

PUBLIC FEEDBACK:

None

BACKGROUND:

The plaintiffs suffered various injuries as a result of a collision with a patrol car at the intersection of Canyon and Broadway. At the time, the traffic signal at the intersection was malfunctioning. The plaintiffs brought a lawsuit against the city alleging that the negligence of the city employee caused them to suffer physical impairment, pain and suffering, medical expenses and loss of earnings. The parties reached an agreement to settle the case for the amount of \$43,500, which is most likely less than the estimated litigation costs to take this matter through trial.

ANALYSIS:

It is not possible to predict the outcome of a trial. Causation issues – the degree to which the city caused the plaintiffs’ injuries – would be an issue of fact for a jury to determine and is hard to predict. It is possible that a jury will apportion some responsibility to the city, potentially leaving the city liable for a portion of the claimed damages and all of its own trial costs. Given the projected costs of litigation and the disputed negligence of the city employee, the city attorney believes that it is unlikely that the city will be in a significantly better economic position by litigating the case as compared to accepting the settlement offer.

OPTIONS:

Council has the option of approving or rejecting the proposed settlement. If the settlement is rejected, the matter will continue to trial.

ATTACHMENTS:

Attachment A - Settlement Agreements

SETTLEMENT AND RELEASE

This Settlement and Release (the “Release”) is entered into on this ____ day of _____, 2015 by Danielle Gower for and in favor of the City of Boulder (the “City”). Ms. Gower is sometimes referred to as the “Plaintiff.” Ms. Gower and the City are sometimes referred to collectively as the “Parties.”

RECITALS

A. On or about June 18, 2014, the Plaintiff filed a civil action in District Court, Boulder County, Colorado, Case No. 2014 CV 30760, against Kara Wills, a City employee, claiming that Ms. Wills, acting within the course and scope of her employment was responsible for certain injuries allegedly suffered by Ms. Gower as a result of a traffic accident purportedly caused by vehicle driven by Ms. Wills.

B. The Parties, without admitting to any liability or wrongdoing, have agreed to enter into settlement for purposes of compromising, resolving and settling any and all claims, liabilities, duties, judgments and obligations as set forth below and subject to the terms and conditions herein.

C. A condition precedent to settlement requires the Plaintiff to dismiss Kara Wills from the Civil Action and substitute the City as the party defendant prior to settlement.

AGREEMENT

NOW THEREFORE, Ms. Gower agrees as follows:

1. Release and Discharge from Ms. Gower. In consideration of the good and adequate consideration provided for herein, the sufficiency of which is hereby acknowledged and confessed, Ms. Gower does hereby for herself, her administrators, conservators, predecessors, successors, assigns, agents, servants and all other persons, and any and all other parties claiming through or under them, unequivocally and without reservation, release, acquit and forever discharge the City, and its employees, contractors, agents, predecessors, successors, servants, administrators, attorneys and insurers of and from any and all liability, actions, causes of action, claims, medical liens, demands, damages, costs, loss of services, loss of properties, expenses, compensation and any and all consequential damages or injuries, which Ms. Gower now has, or which may hereafter arise, be discovered or accrue, known or unknown, contingent or liquidated, suspected or unsuspected, which were or could have been asserted in the Civil Action.

2. General Release. Ms. Gower hereby acknowledges and agrees that the release set forth above in Paragraph 1 is a **GENERAL RELEASE** and the Plaintiff further expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the decision to enter into this Release. Ms. Gower further agrees that she has accepted the benefit of the consideration called for herein as a complete compromise of matters involving disputed issues of law and fact,

and she assumes the risk that the facts or law may be otherwise than they believe. It is understood and agreed that this settlement is a compromise of a disputed claim, and the consideration provided for herein is not to be construed as an admission of liability on the part of the City or Ms. Wills.

3. Indemnification. The Plaintiff agrees to indemnify, defend and hold harmless the City, and others released by this Release, against claims by any person, firm or corporation made pursuant to a theory of assignment, lien interest, subrogation right, or other right of substitution to any claims related to the incident, including claims already made and claims that may be made in the future. This provision shall have application to:

a. Claims, costs, expenses, damages, recoveries and deficiencies, including interest or penalties, that the City, and others released under this Release, may incur as a result of such claims based upon actions, claims or demands by lien holders or by holders of subrogated interests;

b. Claims by governmental entities or agencies, including but not limited to Medicare or Medicaid, or claims by other persons or third-party insurance carriers claiming a subrogation or other interest in the funds paid to the Plaintiff pursuant to this Release; and

c. Claims, actions, or liability for attorneys' fees or costs incurred on behalf of Ms. Gower in connection with the incident or its aftermath, including any fees or costs with regard to which reimbursement may be permitted under Federal or State law.

If any other provision of this Release is deemed unenforceable or invalid for any reason, the Plaintiff's obligation to indemnify, defend and hold harmless under this Release shall continue in full force and effect. This element of the Release is a separately bargained for benefit and is independently enforceable.

4. Consideration. In consideration for the Plaintiff's release of claims and other promises, the City agrees to pay the sum of \$15,500 to the Plaintiff.

5. Warranty of Capacity to Execute Agreement. The Plaintiff represents and warrants that no other person or entity has or has had any interest to the claims, demands, obligations, or causes of action referred to in this Release, and that the Plaintiff has the sole right and exclusive authority to execute this Release, and that Ms. Gower has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action released or referred to in this Release. In the event any third party brings an action under any purported sale, assignment or transfer of Ms. Gower's interest, the Plaintiff agrees to defend and hold the City harmless from such claim.

6. Dismissal of the Civil Action. In consideration of the releases set forth herein, and in consideration of the other good and adequate consideration provided for herein, the sufficiency of which is hereby acknowledged and confessed, the Plaintiff agrees to execute a stipulated motion for the voluntary dismissal of the Civil Action with prejudice against Ms. Wills. The motion will indicate that each party will pay its own fees and costs.

7. Entire Agreement and Successors in Interest. The Release contains the entire agreement between the Parties, and the terms of this Release are contractual and not a mere recital. This Release shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, devisees, agents, employees, officers, directors, trustees, conservators, guardians, beneficiaries, heirs, successors and assigns of each party.

8. No Admission of Liability. It is understood and agreed that this Release is a compromise of disputed claims, and that consideration thereon is not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

9. Mistake. Ms. Gower expressly assumes all risks that this Release was a result of any mistake of any kind, waiving all claims or defenses based upon the doctrine of mistake. This Release shall act as an accord and satisfaction with respect to the Parties and all claims designated herein.

10. Severability. If any provision of this Release shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

11. Headings. The headings of the various paragraphs contained herein are for convenience of reference only and shall not affect the meaning or construction of any of the provisions of this Release.

12. Construction of Release. Except to the extent modified herein, this entire Release shall be construed and interpreted in accordance with the laws of the state of Colorado. Further, the language of this Release shall be construed as a whole, according to its intent, and not strictly for or against any of the Parties, regardless of who drafted or was primarily responsible for drafting any of the language in this Release. The Parties have been given the opportunity to object to, request modification of, or reject any clause or provision herein to which they do not agree. Should any court find any provision in this Release to be ambiguous, then such provision shall be determined in accordance with the Parties' express intention that this Release be construed in the broadest possible manner, in accordance with the Parties' express intention that all disputes asserted by Ms. Gower against the City be forever resolved.

13. Representation of Comprehension of Document. In entering into this Release, the Plaintiff represents that the terms of this document are understood and voluntarily accepted by her, and that she has signed the Release as her own free acts. Except as provided for herein, the Plaintiff has not relied upon any statements or representations made by the City or other persons representing it in the course of negotiating this Release.

14. Additional Documents. The Parties have agreed to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Release, including filing any stipulated or voluntary motion to dismiss the Civil Action against the City with prejudice.

15. Approval by the Boulder City Council. Pursuant to § 2-2-14, B.R.C. 1981, any settlement by the City in an amount in excess of \$10,000 must be approved by the Boulder City Council. This settlement has no force or effect until approved by a majority vote of the Boulder City Council.

Danielle Gower

Date

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by Danielle Gower on this _____ day of _____, 2015.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires:

Notary Public

APPROVED AS TO FORM BY:

Cameron W. Tyler
Cameron W. Tyler & Associates
3223 Arapahoe Ave, Suite 300
Boulder CO 80303
Attorneys for the Plaintiffs

CITY OF BOULDER

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM BY:

Thomas A. Carr
Boulder City Attorney's Office
1777 Broadway
Boulder, CO 80304
Attorney for the Defendant

SETTLEMENT AND RELEASE

This Settlement and Release (the “Release”) is entered into on this ____ day of _____, 2015 by Carol Stimmel for and in favor of the City of Boulder (the “City”). Ms. Stimmel is sometimes referred to as the “Plaintiff.” Ms. Stimmel and the City are sometimes referred to collectively as the “Parties.”

RECITALS

A. On or about June 18, 2014, the Plaintiff filed a civil action in District Court, Boulder County, Colorado, Case No. 2014 CV 30760, against Kara Wills, a City employee, claiming that Ms. Wills, acting within the course and scope of her employment was responsible for certain injuries allegedly suffered by Ms. Stimmel as a result of a traffic accident purportedly caused by a vehicle driven by Ms. Wills.

B. The Parties, without admitting to any liability or wrongdoing, have agreed to enter into settlement for purposes of compromising, resolving and settling any and all claims, liabilities, duties, judgments and obligations as set forth below and subject to the terms and conditions herein.

C. A condition precedent to settlement requires the Plaintiff to dismiss Kara Wills from the Civil Action and substitute the City as the party defendant prior to settlement.

AGREEMENT

NOW THEREFORE, Ms. Stimmel agrees as follows:

1. Release and Discharge from Ms. Stimmel. In consideration of the good and adequate consideration provided for herein, the sufficiency of which is hereby acknowledged and confessed, Ms. Stimmel does hereby for herself, her administrators, conservators, predecessors, successors, assigns, agents, servants and all other persons, and any and all other parties claiming through or under them, unequivocally and without reservation, release, acquit and forever discharge the City, and its employees, contractors, agents, predecessors, successors, servants, administrators, attorneys and insurers of and from any and all liability, actions, causes of action, claims, medical liens, demands, damages, costs, loss of services, loss of properties, expenses, compensation and any and all consequential damages or injuries, which Ms. Stimmel now has, or which may hereafter arise, be discovered or accrue, known or unknown, contingent or liquidated, suspected or unsuspected, which were or could have been asserted in the Civil Action.

2. General Release. Ms. Stimmel hereby acknowledges and agrees that the release set forth above in Paragraph 1 is a **GENERAL RELEASE** and the Plaintiff further expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the decision to enter into this Release. Ms. Stimmel further agrees that she has accepted the benefit of the consideration called for herein as a complete compromise of matters involving disputed issues of

law and fact, and she assumes the risk that the facts or law may be otherwise than they believe. It is understood and agreed that this settlement is a compromise of a disputed claim, and the consideration provided for herein is not to be construed as an admission of liability on the part of the City or Ms. Wills.

3. Indemnification. The Plaintiff agrees to indemnify, defend and hold harmless the City, and others released by this Release, against claims by any person, firm or corporation made pursuant to a theory of assignment, lien interest, subrogation right, or other right of substitution to any claims related to the incident, including claims already made and claims that may be made in the future. This provision shall have application to:

a. Claims, costs, expenses, damages, recoveries and deficiencies, including interest or penalties, that the City, and others released under this Release, may incur as a result of such claims based upon actions, claims or demands by lien holders or by holders of subrogated interests;

b. Claims by governmental entities or agencies, including but not limited to Medicare or Medicaid, or claims by other persons or third-party insurance carriers claiming a subrogation or other interest in the funds paid to the Plaintiff pursuant to this Release; and

c. Claims, actions, or liability for attorneys' fees or costs incurred on behalf of Ms. Stimmel in connection with the incident or its aftermath, including any fees or costs with regard to which reimbursement may be permitted under Federal or State law.

If any other provision of this Release is deemed unenforceable or invalid for any reason, the Plaintiff's obligation to indemnify, defend and hold harmless under this Release shall continue in full force and effect. This element of the Release is a separately bargained for benefit and is independently enforceable.

4. Consideration. In consideration for the Plaintiff's release of claims and other promises, the City agrees to pay the sum of \$28,000 to the Plaintiff.

5. Warranty of Capacity to Execute Agreement. The Plaintiff represents and warrants that no other person or entity has or has had any interest to the claims, demands, obligations, or causes of action referred to in this Release, and that the Plaintiff has the sole right and exclusive authority to execute this Release, and that Ms. Stimmel has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action released or referred to in this Release. In the event any third party brings an action under any purported sale, assignment or transfer of Ms. Stimmel's interest, the Plaintiff agrees to defend and hold the City harmless from such claim.

6. Dismissal of the Civil Action. In consideration of the releases set forth herein, and in consideration of the other good and adequate consideration provided for herein, the sufficiency of which is hereby acknowledged and confessed, the Plaintiff agrees to execute a stipulated motion for the voluntary dismissal of the Civil Action with prejudice against Ms. Wills. The motion will indicate that each party will pay its own fees and costs.

7. Entire Agreement and Successors in Interest. The Release contains the entire agreement between the Parties, and the terms of this Release are contractual and not a mere recital. This Release shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, devisees, agents, employees, officers, directors, trustees, conservators, guardians, beneficiaries, heirs, successors and assigns of each party.

8. No Admission of Liability. It is understood and agreed that this Release is a compromise of disputed claims, and that consideration thereon is not to be construed as an admission of liability on the part of the City, by whom liability is expressly denied.

9. Mistake. Ms. Stimmel expressly assumes all risks that this Release was a result of any mistake of any kind, waiving all claims or defenses based upon the doctrine of mistake. This Release shall act as an accord and satisfaction with respect to the Parties and all claims designated herein.

10. Severability. If any provision of this Release shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

11. Headings. The headings of the various paragraphs contained herein are for convenience of reference only and shall not affect the meaning or construction of any of the provisions of this Release.

12. Construction of Release. Except to the extent modified herein, this entire Release shall be construed and interpreted in accordance with the laws of the state of Colorado. Further, the language of this Release shall be construed as a whole, according to its intent, and not strictly for or against any of the Parties, regardless of who drafted or was primarily responsible for drafting any of the language in this Release. The Parties have been given the opportunity to object to, request modification of, or reject any clause or provision herein to which they do not agree. Should any court find any provision in this Release to be ambiguous, then such provision shall be determined in accordance with the Parties' express intention that this Release be construed in the broadest possible manner, in accordance with the Parties' express intention that all disputes asserted by Ms. Stimmel against the City be forever resolved.

13. Representation of Comprehension of Document. In entering into this Release, the Plaintiff represents that the terms of this document are understood and voluntarily accepted by her, and that she has signed the Release as her own free acts. Except as provided for herein, the Plaintiff has not relied upon any statements or representations made by the City or other persons representing it in the course of negotiating this Release.

14. Additional Documents. The Parties have agreed to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Release, including filing any stipulated or voluntary motion to dismiss the Civil Action against the City with prejudice.

APPROVED AS TO FORM BY:

Cameron W. Tyler
Cameron W. Tyler & Associates
3223 Arapahoe Ave, Suite 300
Boulder CO 80303
Attorneys for the Plaintiffs

CITY OF BOULDER

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM BY:

Thomas A. Carr
Boulder City Attorney's Office
1777 Broadway
Boulder, CO 80304
Attorney for the Defendant

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE: Consideration of a motion to approve the purchase of 5 acres of land and all mineral rights located at 38474 Boulder Canyon Dr. from the Bonnie L. Schnell Revocable Trust for \$400,000 for Open Space and Mountain Parks purposes and an additional \$20,000 is recommended to be authorized from the acquisition budget for the potential deconstruction and recycling of the existing house. Consideration of a motion to recommend that this parcel be included as part of the Western Mountain Parks Habitat Conservation Area.

PRESENTER/S

Jane S. Brautigam, City Manager
Tracy Winfree, Interim Director, Open Space and Mountain Parks
Jim Schmidt, Property Agent

EXECUTIVE SUMMARY

This 5-acre parcel was created as part of the 118-acre Schnell Open Space acquisition in 2012. This was an important acquisition for the department as the land contains the lower reaches of Chapman Drive, a very desirable trail connection between Boulder Canyon and the top of Flagstaff Mountain. At the time of that acquisition, the Schnell family was only willing to enter into the transaction with the City of Boulder if they could retain ownership of a roughly 5-acre “homestead” for possible residential use by a family member. The site contains a modest home where Bonnie Schnell lived and raised her two children as well as a very steep-sided drainage containing Lost Creek, an important wildlife corridor and habitat (See Attachments A and B). The city acquiesced in this negotiation demand conditioned upon the Schnell family granting the city a Right of First Refusal to purchase the 5-acre “homestead” property if it were ever offered for sale to a non-family member. The city also required the Schnell family to enter into a Development Rights Agreement that severely restricted the size and location of the residence that any non-family member could build on the property.

The Schnell family put the 5-acre “homestead” parcel on the market in the spring of 2014, recently receiving an acceptable offer on the property for \$400,000. Upon receipt of the notice of this contract, the Open Space and Mountain Parks (OSMP) Department exercised the Right of First Refusal option, conditioned upon approval of the purchase by Open Space Board of Trustees (OSBT) and City Council.

The Schnell property offers a continuation of the natural values found within the adjacent Western Mountain Parks Habitat Conservation Area (HCA). Biologically rich forest,

woodland, cliff and riparian habitats on the Schnell property combine to form large habitat blocks with no existing trails. These blocks harbor many species that thrive where few people are present. Interior specialist raptors like goshawks and Cooper's hawks, and large forest predators are known to use the property as well as surrounding Open Space. The diversity of habitat types and a dominantly north-facing aspect with seeps and springs support a rich flora that includes Douglas fir, ponderosa pine, numerous montane shrubs, ferns and a wide variety of herbaceous plants. The larger Schnell property provides habitat for rare and uncommon plant species that occur on nearby OSMP land such as the Rocky Mountain sedge, wood lily and several orchid species. Increasing the size and continuity of this rich habitat mosaic through purchase of the Schnell property and designation as a HCA would add to the ecological value and protection of the area.

STAFF RECOMMENDATION

Suggested Motion Language:

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

- 1) Motion to approve the purchase of this 5-acre parcel located at 38474 Boulder Canyon Dr. for \$400,000 and an additional \$20,000 be authorized from the acquisition budget for potential deconstruction and recycling of the existing house.
- 2) Motion to include this parcel as part of the Western Mountain Parks Habitat Conservation Area.

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

- **Fiscal** – The purchase price for the Schnell Homestead parcel being acquired is \$400,000 payable at the time of closing with an additional \$20,000 being authorized for the potential deconstruction and recycling of the existing house.

There are sufficient monies in the Open Space Fund for this acquisition. A Cash Flow Projection is included as Attachment C.

- Staff time - This acquisition is part of the normal work plan for the OSMP real estate property agents.

BOARD AND COMMISSION FEEDBACK

This item was heard at the Jan. 14, 2015 Open Space Board of Trustees public meeting, advertised in the Daily Camera on Jan. 11, 2015. At that meeting, the Board voted unanimously to recommend council approval of the acquisition and the additional \$20,000 of acquisition funds to be used for potential deconstruction of the existing house.

The Board voted 3-2 in favor of recommending council include this parcel as part of the Western Mountain Parks HCA. One Board member voted no on the HCA recommendation because that Board member thought the designation should be heard as a separate agenda item at a separate meeting and the other dissenting Board member thought it best to see what, if anything, becomes of the proposal to dispose of a portion of this parcel for the establishment of a privately-owned and operated trail-side amenity.

PUBLIC COMMENT AND PROCESS

Two members of the public voiced support of this acquisition, one represented PLAN Boulder County and the other represented Friends of Boulder Open Space. Gary Lacy, the individual who submitted the offer of \$400,000 to buy the “homestead” parcel – triggering the city’s Right of First Refusal option – spoke about his proposal to acquire from the city, should the city proceed with this acquisition, the area immediately surrounding the existing residence for use as a “European style” trail-side café amenity offering refreshments, public restrooms and additional public parking.

ANALYSIS

This 5-acre parcel was created as part of the 118-acre Schnell Open Space acquisition in 2012. At the time of that acquisition, the Schnell family was only willing to enter into the transaction with the city if they could retain ownership of this roughly 5-acre “homestead” for possible residential use by a family member. The purchase price for the original 118-acre parcel was \$1,200,000 which equates to a per acre purchase price of \$10,169. This 5-acre “homestead” parcel is now being proposed for purchase at \$80,000 per acre; however, when adding this additional cost to the original Schnell transaction, the overall per acre cost for the entire 123 acres computes to \$13,000 per acre.

The 118-acre Schnell property was made an addition to the adjacent Western Mountain Parks HCA when it was acquired in 2012. It contains biologically rich forest, woodland, cliff and riparian habitats combining to form a large habitat block with no existing trails. This block supports many species that thrive where few people are present. Interior specialist raptors like goshawks and Cooper's hawks, and large forest predators are known to use the property as well as surrounding Open Space. The diversity of habitat types and a dominantly north-facing aspect with seeps and springs support a rich flora that includes Douglas fir, ponderosa pine, numerous montane shrubs, ferns and a wide variety of herbaceous plants. It is likely that the Schnell property provides habitat for

rare and uncommon plant species that occur on nearby OSMP land such as the Rocky Mountain sedge, wood lily, and several orchid species. The 5-acre “homestead” parcel under consideration for acquisition includes two very steep-sided, wooded drainages capturing the lower reaches of Lost Creek and another unnamed creek, forming an important wildlife corridor and habitat connection to the greater Western Mountain Parks HCA. Increasing the size and continuity of this rich habitat mosaic through purchase of the Schnell “homestead” parcel and designation as a Habitat Conservation Area would add to the ecological value and protection of the area.

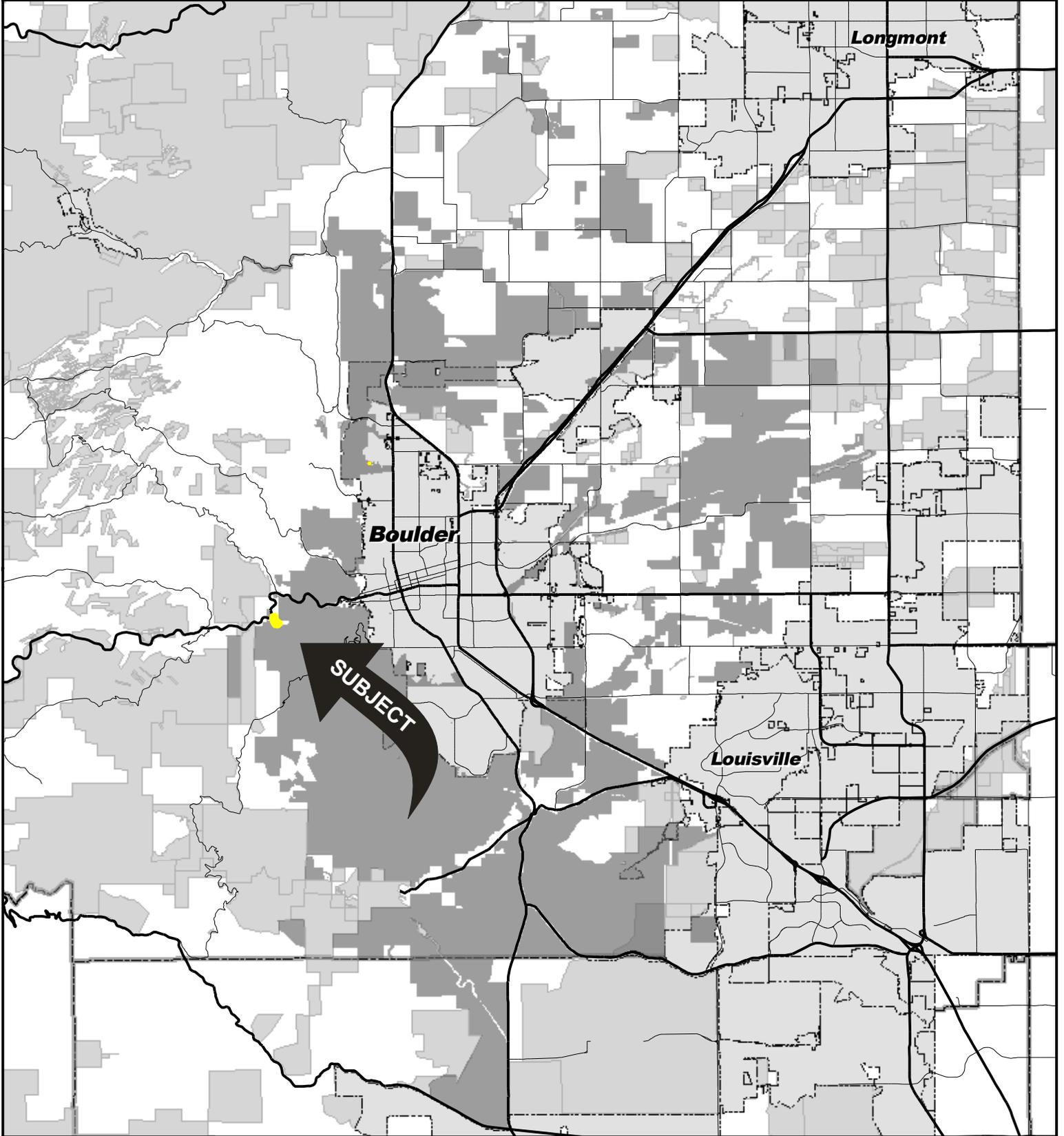
The Schnell family put the 5-acre “homestead” parcel on the market in the spring of 2014, recently receiving an acceptable offer on the property for \$400,000. Upon receipt of the notice of this contract, the OSMP exercised the Right of First Refusal option, conditioned upon approval of the purchase by Board and council. The individual who submitted the offer of \$400,000 to buy the “homestead” parcel – triggering the city’s Right of First Refusal option - approached Open Space staff with a proposal to acquire the area immediately surrounding the existing residence for \$200,000 from the city for use as a “European style” trail-side café amenity offering refreshments, public restrooms and additional public parking. This proposal is necessarily conditioned upon that individual’s ability to receive an appropriate lot split subdivision, zoning and land use approvals from Boulder County. Should those approvals be forthcoming, Open Space staff will bring this intriguing proposal back to the Open Space Board of Trustees and City Council at a later date for a full discussion and vetting, pursuant to the process outlined in Charter Section 177 - Disposal of Open Space Lands.

ATTACHMENTS:

- A. Vicinity Map**
- B. Location Map**
- C. Cash Flow Projection**

ATTACHMENT A - City of Boulder Open Space & Mountain Parks

VICINITY MAP - Schnell Homestead



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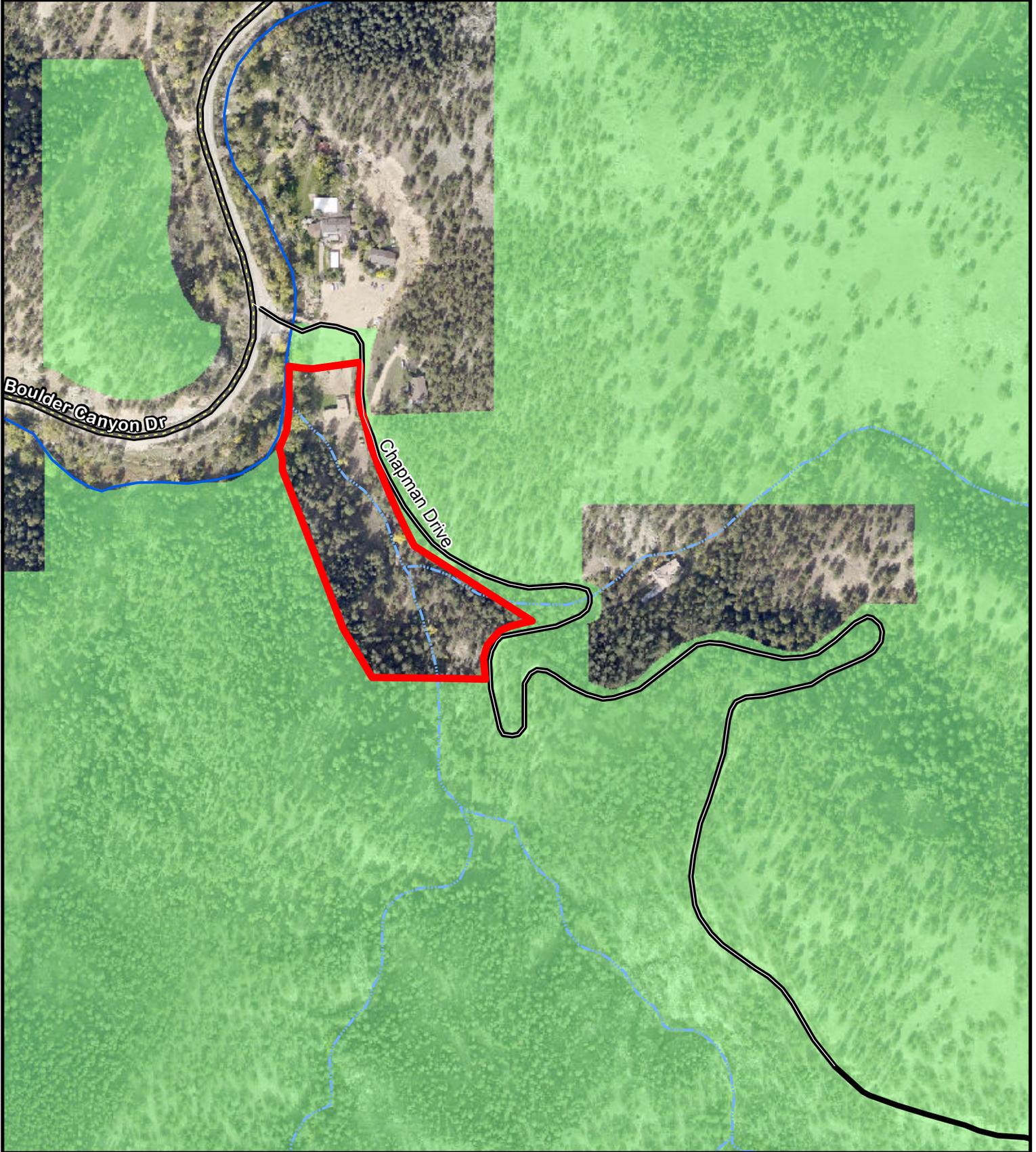
-  Subject Property
-  City of Boulder OSMP
-  Other Public Lands



0 0.5 1 2 3 4 5 Miles

Approximate property boundaries from Boulder GIS data.

ATTACHMENT B - City of Boulder Open Space & Mountain Parks LOCATION MAP - Schnell Homestead



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-  Private Residence
-  OSMP Properties



0 100 200
Feet

Agenda Item 5A Page 6

Projected Open Space Cashflow 2014-2020
SCHNELL HOMESTEAD
 1/14/2015

	<u>2014 Actual</u>	<u>2015 Adopted</u>	<u>2016 Projected</u>	<u>2017 Projected</u>	<u>2018 Projected</u>	<u>2019 Projected</u>	<u>2020 Projected</u>
PROJECTED SALES TAX GROWTH							
1 2011-2018 Sales Tax forecast 05/08/2012	3.48%	3.28%	3.29%	3.20%	3.15%	3.15%	
2 2013-2019 Sales Tax forecast 04/05/2013	-1.78%	8.26%	3.02%	3.73%	3.41%	-9.52%	
3 2014-2019	3.50%	3.35%	3.35%	3.25%	3.20%	3.20%	
4 2015-2020		3.13%	3.02%	3.73%	3.41%	3.41%	3.41%
5 BEGINNING CASH BALANCE	\$17,110,163	\$28,801,431	\$22,736,445	\$23,832,153	\$28,373,618	\$33,639,435	\$37,459,806
SOURCES OF FUNDS							
5 OS Sales Tax Revenue (for 2014 budget used as not all 2014 sales tax received)	\$26,295,672	\$28,467,600	\$29,327,322	\$30,421,231	\$31,458,595	\$28,464,917	\$23,701,368
6 OS Fund - Investments/Leases/Misc.	\$831,242	\$671,856	\$817,193	\$669,163	\$682,428	\$696,090	\$710,163
7 Proceeds from RE sale	\$6,791						
8 Proceeds from 2014 Bond Sale	\$10,123,341						
8 Funds from CDOT for Granite acquisition							
9 General Fund Transfer for Mountain Parks:	\$1,103,384	\$1,140,735	\$1,171,553	\$1,208,122	\$1,245,832	\$1,284,720	
10 General Fund Appropriation for Real Estate Services:	\$152,642	\$148,889	\$150,378	\$151,882	\$153,400	\$154,934	\$156,484
11 Lottery Fund Appropriation for CIP Purposes:	\$343,000	\$355,300	\$355,300	\$355,300	\$355,300	\$355,300	\$355,300
12 Unexpended Lottery Funds Carried Over from Previous Year	\$141,764						
13 Grants	\$72,525						
13 Total Annual Sources of Funds:	<u>\$39,070,361</u>	<u>\$30,784,380</u>	<u>\$31,821,746</u>	<u>\$32,805,698</u>	<u>\$33,895,555</u>	<u>\$30,955,961</u>	<u>\$24,923,315</u>
14 Total Sources of Funds Available:	<u>\$56,180,524</u>	<u>\$59,585,811</u>	<u>\$54,558,191</u>	<u>\$56,637,851</u>	<u>\$62,269,174</u>	<u>\$64,595,397</u>	<u>\$62,383,121</u>
USES OF FUNDS							
15 Total Debt Service for Bonds & Notes:	\$7,313,610	\$5,499,199	\$5,377,423	\$4,780,124	\$4,566,365	\$2,685,917	\$660,686
16 Capital Available for Land Acquisitions & Preservation	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000
17 2014 Bond Proceeds	\$10,123,341	\$6,892,413					
17 Total Capital Available for Land Acquisitions & Preservation:	\$15,523,341	\$12,292,413	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000
18 RE Acquisition 2014	\$5,174,203						
19 Schnell Homestead		\$400,000					
22 Remaining Land Acquisition Capital Available:	<u>\$10,349,138</u>	<u>\$11,892,413</u>	<u>\$5,400,000</u>	<u>\$5,400,000</u>	<u>\$5,400,000</u>	<u>\$5,400,000</u>	<u>\$5,400,000</u>
23 Capital for Visitor Infrastructure:	\$1,005,257	\$1,758,700	\$1,010,000	\$1,010,000	\$1,070,000	\$920,000	\$930,000
24 Unexpended Visitor Infrastructure Funds Carried Over from Previous Year							
25 Supplemental Visitor Infrastructure Appropriation			\$300,000				
26 Vehicle Acquisition							
27 Highway 93 Underpass							
28 Capital for Water Rights Acquisition:	\$89,511	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
29 Unexpended Water Rights Funds Carried Over from Previous Year							
30 South Boulder Creek Flow In Stream Flow:	\$1,912	\$150,000	\$2,000,000				
31 South Boulder Creek Flow In Stream Flow Carried Over from Previous Year							
32 Capital for Mineral Rights Acquisition:	\$0	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
33 Unexpended Mineral Rights Funds Carried Over from Previous Year							
34 Lottery Capital for MP Restoration	\$224,226	\$355,300	\$355,300	\$355,300	\$355,300	\$355,300	\$355,300
35 Unexpended Lottery Funds Carried Over from Previous Year							
36 Total CIP Expenditures:	<u>\$6,495,109</u>	<u>\$14,856,413</u>	<u>\$9,365,300</u>	<u>\$7,065,300</u>	<u>\$7,125,300</u>	<u>\$6,975,300</u>	<u>\$6,985,300</u>
37 Management Operating Expenditures - OSMP Program:	\$12,309,332	\$14,996,163	\$14,416,801	\$14,779,984	\$15,223,383	\$15,680,085	\$16,150,487
38 Operating Supplemental and Carryover							
39 Management Operating Expenditures - RE Services:	\$152,642	\$148,889	\$150,378	\$151,882	\$153,400	\$154,934	\$156,484
40 Cost Allocation:	\$1,108,400	\$1,348,701	\$1,416,136	\$1,486,943	\$1,561,290	\$1,639,354	\$1,721,322
41 Total Management Operating Expenditures:	<u>\$13,570,374</u>	<u>\$16,493,753</u>	<u>\$15,983,315</u>	<u>\$16,418,809</u>	<u>\$16,938,073</u>	<u>\$17,474,373</u>	<u>\$18,028,293</u>
42 Total Uses of Funds:	<u>\$27,379,093</u>	<u>\$36,849,365</u>	<u>\$30,726,038</u>	<u>\$28,264,233</u>	<u>\$28,629,738</u>	<u>\$27,135,590</u>	<u>\$25,674,279</u>
ENDING CASH BALANCE:							
43 Less Reserves:	\$28,801,431	\$22,736,445	\$23,832,153	\$28,373,618	\$33,639,435	\$37,459,806	\$36,708,842
44 Less Reserve for 27th Pay Period	\$3,500,000	\$2,500,000	\$2,400,000	\$2,000,000	\$2,000,000	\$1,100,000	\$100,000
45 Sick/Vacation/Bonus Reserve	\$45,000	\$95,000	\$145,000	\$195,000			
46 Property and Casualty Reserve	\$490,000	\$490,000	\$490,000	\$490,000	\$490,000	\$490,000	490000
47 South Boulder Creek Flow Reserve	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	400000
48 IBM Connector Trail	\$1,750,000	\$2,000,000					
49 Vehicle Acquisition Reserve	\$150,000	\$300,000					
50 Facility Maintenance Reserve	\$100,000	\$200,000	\$300,000	\$400,000	\$500,000	\$600,000	
51 UNRESTRICTED CASH BALANCE AFTER RESERVES:	<u>\$22,366,431</u>	<u>\$16,551,445</u>	<u>\$20,097,153</u>	<u>\$24,888,618</u>	<u>\$30,249,435</u>	<u>\$34,869,806</u>	<u>\$36,608,842</u>



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE: Second reading and consideration of a motion to order published, by title only, and adopt Ordinance No. 8015 amending Chapter 6-4, B.R.C. 1981, adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” including electronic smoking devices in the definition of smoking, and setting forth related details; **or in the alternative**, consideration of a motion to order published, by title only, and adopt Ordinance No. 8017 amending Chapter 6-4, B.R.C. 1981, adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” and setting forth related details.

PRESENTER/S

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Maureen Rait, Executive Director of Public Works
Jeff Dillon, Interim Director of Parks and Recreation
Yvette Bowden, Deputy Director of Parks and Recreation
Sandra Llanes, Senior Assistant City Attorney
Lisa Martin, Urban Parks Manager
Eric M. Ameigh, Public Works Projects Coordinator

EXECUTIVE SUMMARY

In January 2014, City Council provided staff with general direction to develop a proposal to ban smoking in parks, on open space, and in other public places that would further council’s goal of making Boulder as healthy and smoke-free as possible. In response, an interdepartmental staff team developed a draft ordinance. After consulting numerous boards and commissions and soliciting council feedback on the draft ordinance at a [Sept. 23, 2014 study session](#), staff has refined the ordinance for formal council consideration.

The existing code prohibits smoking in buildings (with some exceptions) and within 15 feet of any entryway, including patios. The proposed ordinance extends the ban to public outdoor spaces such as open space, multi-use paths, parks, within the downtown Business Improvement District, within 25 feet of bus stops, and within a defined area surrounding Boulder High School.

At [first reading on Nov. 18, 2014](#), council passed both Ordinance 8015 (Attachment A), which includes a ban on electronic smoking devices, and 8017 (Attachment B), which does not. Council requested the two different versions in order to keep its options open until the community had the opportunity to comment on the ordinances. Staff recommends that council adopt Ordinance 8015, which includes electronic smoking devices.

The ordinance presented and passed at first reading contains a typographical error; it prohibits smoking within 20 feet of a bus stop rather than the 25 feet council requested at the Sept. 23, 2014 study session. Staff recommends that council choose to amend the ordinance on second reading using the suggested motion language referencing Attachment C to this agenda memo. The ordinance will then be read for a third time at the Feb. 17, 2015 council meeting, where the item will be on the consent agenda.

If council passes an ordinance at third reading on Feb. 17, it will become effective on March 19, 2015. Law enforcement personnel will provide warnings and education with limited enforcement from March 19 through April 30 and then begin typical enforcement, as needed. A robust public information campaign will commence late in the first quarter of 2015 to inform the public about the expanded smoking ban before enforcement begins.

Suggested Motion Language

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

Motion to amend at second reading Ordinance No. 8015 amending Chapter 6-4, B.R.C. 1981, adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” including electronic smoking devices in the definition of smoking, incorporating the amendment made in Attachment C, and setting forth related details.

Or, in the alternative:

Motion to amend at second reading Ordinance 8017 amending Chapter 6-4, B.R.C. 1981, adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” incorporating the amendment made in Attachment C, and setting forth related details.

BOARD AND COMMISSION FEEDBACK

Significant board and commission feedback helped to shape the proposed ordinances. In addition to board and commission input, the proposed ordinances reflect the changes requested by council at its [Sept. 23, 2014 study session](#).

PUBLIC FEEDBACK

Community feedback on the proposal to expand the ban on smoking has been somewhat mixed. Many positive comments have been made, although opposition to the inclusion of electronic smoking devices has emerged.

Some community members have spoken out against the inclusion of electronic smoking devices on the grounds that there are no demonstrated secondhand effects and that the devices are successfully used for smoking cessation. As of this writing, a Change.org petition asking council to exempt electronic smoking devices from the ban has gathered over 400 signatures, though it is unclear how many signatories are city residents.

BACKGROUND

The Boulder community has a long history of commitment to both health and quality of life. As part of that commitment, the city has historically regulated smoking in public places. In 1975, the first ordinance regulating smoking in public places was adopted, making Boulder one of the first communities in Colorado to enact a smoking ban. In 2009, the ordinance was updated to reflect and comply with the Colorado Clean Indoor Act of 2006. It was also in 2009 that council adopted an ordinance banning smoking within 15 feet of building entrances. In late 2012, council adopted an ordinance banning smoking on the Pearl Street Mall. In January 2014, a city manager rule banning smoking went into effect on the municipal campus and a second rule banned smoking in the area around Boulder High School in October 2014.

In early 2014, City Council reaffirmed the city's commitment to clean air and enjoyment of public spaces by directing city staff to develop a proposal that would eliminate the possibility of outdoor secondhand smoke in nearly all of the city's heavily used public gathering spaces and recreational facilities. At a study session on Jan. 28, 2014, council provided staff with general direction to develop a proposal to ban smoking in parks, on open space, and in other public places. In addition, council directed staff to do its best to ensure that the proposed smoking ban would be enforceable. Staff was directed to take a proposal to relevant boards and commissions before returning to council later in the year for consideration of the proposal.

The staff team responded to council's direction with a proposed ordinance that was then reviewed by a variety of city boards and commissions in the areas affected by the proposed ordinance. The staff proposal was discussed at a Sept. 23, 2014 council study session. After incorporating council feedback and requested changes, the draft ordinance contained the following key provisions:

1. Smoking was to be banned:

- on all city parkland;
- on all city open space;
- within 25 feet of all bus stops;
- on all multi-use paths and within 15 feet of their boundaries;
- on public property and right of ways within the boundaries of the downtown Business Improvement District; and

- in a defined area surrounding Boulder High School.

2. The definition of smoking was to include electronic smoking devices, including electronic cigarettes.

Following the study session, council received some public feedback indicating that electronic smoking devices should be exempted from the ban. Council requested that a second version of the ordinance, exempting electronic smoking devices, be prepared for consideration so that it might wait to make such a decision until the community had a chance to comment at a public hearing.

Council passed both versions of the ordinance at first reading on Nov. 18, 2014 – one including electronic smoking devices and one exempting the devices. There were no other questions from council at first reading. Council may decide whether to include or exclude electronic smoking devices after the staff presentation and public hearing on Feb. 3, 2015, or at third reading on Feb. 17, 2015.

The regulations prohibiting smoking have evolved and the implementation of these proposed changes will be monitored. Should impacts warrant consideration of additional changes in the future, such as the application of the prohibition to the University Hill General Improvement District, those changes will be vetted by the relevant boards and/or commissions and scheduled for council consideration.

For additional background, see the [Nov. 18, 2014 first reading memo](#).

ANALYSIS

General Considerations

Staff considered the different mechanisms to ban smoking in the desired areas. After internal discussions, it was clear that an ordinance was preferred over a city manager rule because ordinances are more easily enforceable by law enforcement personnel. An ordinance has a clear statute number for officers to remember. A city manager rule is enforced under a statute number that encompasses all city manager rules, but not any one rule specifically. An ordinance also carries more weight in court. For example, violations of an ordinance can result in jail time, but violations of a city manager rule cannot.

Electronic Smoking Devices

Staff supports the inclusion of electronic smoking devices in the ordinance. Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products. Electronic smoking devices may also be filled with substances other than nicotine, including marijuana, meth, and other illegal substances. These factors make enforcement challenging for police. The U.S. Food and Drug Administration has not yet provided any definitive guidance on electronic smoking devices, so consumers do not fully know the potential risks of their use. However, according to extensive secondary research by Boulder County Public Health

staff, the vapor has been proven to contain more than just water; it often includes harmful or potentially harmful chemicals. Many organizations are recommending regulating electronic smoking devices, including; the World Health Organization, the National Association of City and County Health Officials, the American Heart Association, the American Lung Association, and others.

In addition, there is the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle. The use of electronic smoking devices in smoke-free locations also threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

For more information on electronic smoking devices, see the attached fact sheets from the Boulder County Department of Public Health and California-based public health nonprofit ChangeLab Solutions (Attachment D).

Open Space and Mountain Parks (OSMP)

The recommended ordinance bans smoking on all OSMP properties, including trails, without exception. A lack of secondhand smoke will enhance the visitor experience and an absolute prohibition on smoking will help mitigate a potential fire hazard on OSMP properties. Designated public access points to OSMP currently provide the regulatory infrastructure necessary to notify users of the smoking ban.

Parks and Recreation

The recommended ordinance bans smoking in all city-owned, maintained, and leased park land, park property and recreation facilities, including Flatirons Golf Course and Chautauqua. The prohibition will also extend to leased facilities such as the Dairy Center for the Arts, Boulder History Museum, and Boulder Museum for Contemporary Art (BMoCA). Smoking is already banned inside these buildings and the ordinance will ban smoking across the entirety of the properties.

Downtown

The recommended ordinance bans smoking within the boundaries of the Business Improvement District (BID), including alleys. When Downtown Boulder Inc. surveyed its membership in June 2014, more than 60 percent of respondents supported the draft proposal. Anecdotally, it seems that the Pearl Street Mall smoking ban has been seen as a successful initiative.

Multi-use Paths

The recommended ordinance bans smoking on all [multi-use paths](#) and within 15 feet on each side of a multi-use path. Staff has determined that this is the most comprehensive way to enhance the path user experience, although there are a few factors to consider.

1. Some multi-use paths are also sidewalks, such as on the east side of 28th Street between Arapahoe Avenue and Pearl Street and on the north side of Arapahoe Avenue between Folsom and 55th streets. The city publicizes sidewalks designated as multi-use

paths on the [Map of Bike and Pedestrian Routes](#), [Map of Sidewalks for Biking and Skateboarding](#), and [Map of Boulder's Multi-Use Path Network](#). Additionally, these sidewalks are distinguished from regular sidewalks by signage.

2. Some stretches of multi-use paths are on University of Colorado (CU) property where the city has an easement. The university is currently a smoke-free campus, with only a few areas that allow smoking. Therefore, it is expected that CU will support the smoking ban on all multi-use paths. The city and CU have an intergovernmental agreement where city police can enforce local ordinances on CU (state-owned) property. Therefore, the city would be able to enforce this ordinance regardless of the property ownership rights associated with the location. The city has also general police powers granted by Colorado law to enforce its laws within the city boundaries, including the CU campus.

Transit Facilities

The city is coordinating with the Regional Transportation District (RTD) regarding the proposed smoking ban. City staff's recommendation is to ban smoking within 25 feet of all transit passenger waiting areas, including bus stop benches and shelters. The ordinance presented and passed at first reading contains a typographical error; it prohibits smoking within 20 feet of a bus stop rather than the 25 feet council requested at the Sept. 23, 2014 study session. Staff recommends that council choose to amend the ordinance on second reading using the suggested motion language referencing Attachment C to this agenda memo.

RTD is generally supportive of a smoking ban around its bus stops, but would not support an ordinance that required RTD to create additional signage or enforce a smoking ban. RTD has a limited security force whose primary focus is to deal with safety and security on mass transportation vehicles.

With respect to existing RTD mass transportation vehicles, RTD public buildings, and within 15 feet of facility entryways, RTD has posted "No Smoking" signage in conformance with the Colorado Clean Indoor Air Act (state law C.R.S. 25-14-201, et seq.). RTD currently has no other smoking restrictions. Additionally, RTD has signs that designate the Boulder Transit Center at 14th and Walnut streets as a "No Smoking" zone and RTD informational signage within bus shelters also includes the international "No Smoking" symbol.

Transit-related amenities on public streets, such as benches and shelters, are not always under RTD control. Some of these amenities are maintained by local jurisdictions. Transit stop locations are designated by signage, and such signage is generally under the control of RTD. RTD recommends that additional signage be installed on these assets to assist with public information and enforcement of the smoking ban. RTD is amenable to allowing signage at its stops of a mutually agreeable size and in a mutually agreed-upon location. All new signage would be furnished, installed and maintained by the city. RTD would also want to review the size and placement of any new "No Smoking" signage produced by the city to ensure that the messages, along with RTD's existing signage regarding bus routes and services, are clearly visible. City staff is exploring a decal

displaying the international “No Smoking” symbol, supplemented by “within 25 feet” to install on RTD benches and shelters.

Municipal Campus and Boulder High School Area Smoking Ban Rules

The recommended ordinance makes permanent the prohibition against smoking on the Municipal Campus and the Boulder High School area, as established in existing city manager rules.

STAFF RECOMMENDATION

Staff recommends that council amend Ordinance 8015, which includes electronic smoking devices, at second reading in preparation for adoption at third reading. Staff recommends proceeding with the option that includes electronic smoking devices for the reasons listed below.

- The potential health effects, both for users and for secondhand inhalers, have not been fully studied so they cannot be assumed to be safe.
- Use of electronic smoking devices models vaporizing or smoking as normal behavior to young people.
- The nicotine cartridges used in electronic smoking devices come in many flavors that may be attractive to children and young people.
- Confusion could result for both the public and law enforcement personnel if the use of electronic smoking devices is allowed in areas where smoking is banned.
- Based on staff research, the emerging best practice in smoking bans is to also ban electronic smoking devices.

NEXT STEPS

If council amends an ordinance at second reading, the next steps will include:

- **Feb. 17, 2015:** Third reading on the consent agenda.
- **March 19, 2015:** The ordinance goes into effect.
- **November 2014 – March 2015:** City staff will work in cooperation with Boulder County Department of Public Health’s Tobacco Education and Prevention Program to develop smoking cessation messaging and prepare citywide outreach content for print and online media.
- **March 19 – April 30, 2015:** The public education campaign and warning period will occur. During this time period, the Boulder Police Department will focus its efforts on warnings; though officers may issue tickets, if necessary.
- **May 1, 2015:** The warning period will end and the Boulder Police Department will begin writing tickets more regularly. However, officers will continue to use their discretion and warnings may be more appropriate for first-time offenders.

- **April 2015:** Open Space and Mountain Parks staff will begin their seasonal outreach efforts.

ATTACHMENTS

- **Attachment A** – Ordinance amending Chapter 6-4, B.R.C. 1981 (includes a ban on electronic smoking devices).
- **Attachment B** – Ordinance amending Chapter 6-4, B.R.C. 1981 (does not include a ban on electronic smoking devices).
- **Attachment C** – Proposed Alternative Ord. Language Correcting Scrivener’s Error
- **Attachment D** – Electronic Cigarette Fact Sheets from Boulder County Department of Public Health and ChangeLab Solutions.

ORDINANCE NO. 8015

AN ORDINANCE AMENDING CHAPTER 6-4, B.R.C. 1981, ADDING A NEW SECTION 6-4-3.5 “SMOKING PROHIBITED IN PUBLIC PLACES,” INCLUDING ELECTRONIC SMOKING DEVICES IN THE DEFINITION OF SMOKING, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Chapter 6-4, “Regulation of Smoking,” B.R.C. 1981, is amended as follows:

6-4-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by prohibiting smoking in designated public places and prohibiting smoking in buildings open to the public or serving as places of work, except in certain buildings or parts of buildings where the council has determined that smoking should not be prohibited, and fixing the requirements of property owners in this regard. ~~In addition,~~ this chapter also regulates access of minors to tobacco products.

In addition, the city council finds that electronic smoking devices are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user and that use of electronic smoking devices has increased significantly in recent years. The city council further finds that electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

City council finds that the use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

Therefore, the purpose of this chapter is also to protect the public health, safety, and welfare by discouraging the use of electronic smoking devices around non-users, especially children; by protecting the public from exposure to secondhand byproducts of electronic smoking devices where they live, work, and play; by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; and by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle.

6-4-2. Definitions.

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

1 “Bar” means any indoor area that is operated and licensed as a tavern liquor license under Article
2 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on premises
consumption and where the service of food is secondary to the consumption of such beverages.

3 “Boulder High School Area” means the entire area between the east curb line of Broadway
4 Street, the south curb line of Arapahoe Avenue, the west curb line of 17th Street, and the north
5 curb line of University Avenue, provided, however, that this definition shall not apply to the
6 public right of way associated with Hillside Road, to moving vehicles traveling on any public
7 right of way in the area described, or unless otherwise prohibited by this Chapter, to real property
8 that is privately owned.

9 “Building” means any structure enclosed for protection from the weather, whether or not
10 windows or doors are open. If a person leases or possesses only a portion of a building, the term
11 “building” applies to the leasehold or possessory interest as well.

12 “City Municipal Campus,” as used in this Chapter shall mean the entire area between the east
13 curb line of 13th Street, to the east curb line of 9th Street and between the north curb line of
14 Arapahoe Avenue and the south curb line of Canyon Boulevard, provided, however, that this
15 definition shall not apply to moving vehicles on Broadway or 13th Street or, unless otherwise
16 prohibited by this Chapter, to real property that is privately owned.

17 “Cigar-tobacco bar” means a bar that, in the calendar year ending December 31, 2005, generated
18 at least five percent or more of its total annual gross income or fifty thousand dollars in annual
19 sales from both the onsite sale of tobacco products and the rental of onsite humidors. In any
20 calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total
21 annual gross income or fifty thousand dollars in annual sales both from the onsite sale of tobacco
22 products and the rental of onsite humidors, shall not be defined as a “cigar-tobacco bar” and shall
23 not thereafter be included in the definition, regardless of sales figures.

24 “Dwelling,” as used in this chapter, means any place used primarily for sleeping overnight and
25 conducting activities of daily living, not including a hotel or motel room or suite or bed and
breakfast.

“Downtown Boulder Business Improvement District” is as depicted in Appendix 8-B of Chapter
8-6.

“Electronic smoking device” means an electric or battery-operated device, the use of which
resembles conventional smoking, which can be used to deliver substances, including, but not
limited to, nicotine, tobacco, or marijuana, to the person using such device. Electronic smoking
device shall include, without limitation, an electronic cigarette, cigar, cigarillo, pipe, or hookah.
Electronic smoking device shall not include any product approved by the food and drug
administration as a drug or medical device that is used in accordance with its purpose.

“Enclosed area,” as used in this chapter, means an area which contains a structure made up of a
roof and two or more walls regardless of the composition of the walls or roof. This includes, but
is not limited to, the following: park shelters, event tents, bus shelters, patio awnings and
canopies.

1 “Entryway” means the outside of any doorway leading into and exiting from a building or
2 enclosed area. “Entryway” also includes the area of public or private property within fifteen feet
of the doorway.

3 “Mall” means the Downtown Boulder Mall as defined in Ordinance No. 4267, as amended by
4 Ordinance No. 4543 and any successor ordinance.

5 “Public,” as used in this Chapter shall mean any property that is city owned; city maintained; city
6 owned and leased to others; designated by the city as a path or trail for bicycles or pedestrians; or
a transit stop as defined in this section.

7 “Public conveyance” means any motor vehicle or other means of conveyance licensed by the
8 Public Utilities Commission of the state for the transportation of passengers for hire, and
includes, without limitation, busses, taxicabs, limousine services, and airport passenger services.

9 “Smoke” or “smoking” means the lighting of any cigarette, cigar, ~~or~~, pipe or activation of an
10 electronic smoking device, or the possession of any lighted cigarette, cigar, ~~or~~ pipe, or activated
electronic smoking device regardless of its composition.

11 “Tobacco product” means cigarettes, cigars, cheroots, stogies, periques, and other products
12 containing any measurable amount of tobacco, granulated, plug cut, crimp cut, ready rubbed, and
other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other
13 chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other
kinds and forms of tobacco, prepared in such manner as to be suitable for both chewing or for
14 smoking in a cigarette, pipe, electronic smoking device or otherwise, or both for chewing and
smoking. Tobacco also includes cloves, marijuana, and any other plant matter or product that is
15 packaged for smoking.

16 “Tobacco store” means a retail business open to the public where alcohol is not sold, if more
17 than eighty-five percent of its gross revenue from that location is from the retail sale of cigarettes
and tobacco products or products related to the use of cigarettes and tobacco products.

18 “Transit Stop,” as used in this chapter, means a public conveyance passenger waiting area
19 designated by signage attached to a post and the public right of way around the stop, including
but not limited to the bus shelter, and bench.

20 **6-4-3. Smoking Prohibited Within Buildings and Enclosed Areas.**

- 21 (a) No person shall smoke within any building or enclosed area except in one of the
following locations:
- 22 (1) In any dwelling. This exception does not extend to a city owned dwelling;
23 or a lobby, common elevator, common hallway or any other common area
of a building containing attached dwelling units;
- 24 (2) In a hotel/motel room or bed and breakfast guest room rented to one or
25 more guests if the total percentage of such smoking rooms in such
hotel/motel or bed and breakfast does not exceed twenty-five percent. This

1 exception does not extend to a lobby, common elevator, common hallway
2 or any other common area of a hotel/motel or bed and breakfast;

3 (3) In a tobacco store;

4 (4) In a cigar-tobacco bar which existed as of December 31, 2005, provided
5 that it does not expand its size or change its location from the size and
6 location in which it existed as of December 31, 2005;

7 (5) In a building or on property which is occupied by the state of Colorado,
8 the United States government, Boulder County or the Boulder Valley
9 School District which was not designated as a smoke free area by the
10 manager of such area. The city council urges such governmental entities to
11 designate smoke free areas in order to promote full access by the public
12 and protect the health of employees;

13 (6) In private homes, private residences and private automobiles; not to
14 include any such home, residence or vehicle being used for child care or
15 day care or a private vehicle being used for the public transportation of
16 children or as part of health care or day care transportation; or

17 (7) In a limousine under private hire.

18 (b) Unless excepted under subsection (a) of this section, the prohibitions of this
19 chapter apply to all buildings or enclosed areas which serve as places of work, but
20 this subsection (b) neither enlarges nor diminishes the meaning of subsection (a)
21 of this section.

22 (c) Nothing in this chapter shall prevent an owner, lessee, principal manager or
23 person in control of any place, including, without limitation, any motor vehicle,
24 outdoor area or dwelling, from prohibiting smoking completely in such place, and
25 no person shall fail to abide by such a private prohibition.

18 **6-4-3.5. Smoking Prohibited in Public Areas.**

19 No person shall smoke in a public area:

20 (a) in the Downtown Boulder Business Improvement District including the Mall;

21 (b) on any park, parkland or facility;

22 (c) on any open space and mountain parks property;

23 (d) on any trail, path or multi-use path and within fifteen feet of curtilage to any trail,
24 path or multi-use path;

25 (e) within twenty-five feet of a library facility;

1 (f) within twenty-feet of a transit stop;

2 (g) within the City Municipal Campus; and

3 (h) within the Boulder High School Area as defined in this Chapter.

4 ~~**6-4-5.5 Smoking Prohibited on the Mall.**~~

5 ~~No person shall smoke on the Mall.~~

6 **6-4-6. Signs Required to Be Posted.**

7 To advise persons of the existence of “No Smoking” or “Smoking Permitted” areas, no owner,
8 lessee, principal manager or person in control of a building, enclosed area or an establishment
9 within a building shall fail to post signs with letters no less than one inch high or symbols no less
10 than three inches high as follows:

11 (1) Where smoking is prohibited in the entire establishment, a sign using the words
12 “No Smoking” or the international no-smoking symbol shall be posted
13 conspicuously either on all public entrances or in a position clearly visible on
14 entry into the building, enclosed area or establishment.

15 (2) Where certain areas are designated as smoking areas pursuant to this chapter, a
16 sign using the words “No Smoking Except in Designated Areas” shall be posted
17 conspicuously either on all public entrances or in a position clearly visible on
18 entry into the building or establishment.

19 (3) In tobacco stores, a sign shall be posted conspicuously either on all public
20 entrances or in a position clearly visible on entry into the building or
21 establishment using the words “Smoking Permitted: children under eighteen years
22 of age must be accompanied by a parent or guardian.”

23 (4) A sign using the words “No Smoking within fifteen feet of the entryway” shall be
24 posted conspicuously on all entryways of buildings, enclosed areas or
25 establishments.

 (5) The requirements of this section do not apply to an exempt dwelling or any public
areas designated in section 6-4-3.5.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

Section 3. The 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.

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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY

TITLE ONLY this 18th day of November, 2014.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this 3rd day of February, 2015.

Mayor

Attest:

City Clerk

ORDINANCE NO. 8017

AN ORDINANCE AMENDING CHAPTER 6-4, B.R.C. 1981, ADDING A NEW SECTION 6-4-3.5 “SMOKING PROHIBITED IN PUBLIC PLACES,” AND SETTING FORTH RELATED DETAILS.

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

Section 1. Chapter 6-4, “Regulation of Smoking,” B.R.C. 1981, is amended as follows:

6-4-1. Legislative Intent.

The purpose of this chapter is to protect the public health, safety, and welfare by prohibiting smoking in designated public places and prohibiting smoking in buildings open to the public or serving as places of work, except in certain buildings or parts of buildings where the council has determined that smoking should not be prohibited, and fixing the requirements of property owners in this regard. ~~In addition,~~ this chapter also regulates access of minors to tobacco products.

6-4-2. Definitions.

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

“Bar” means any indoor area that is operated and licensed as a tavern liquor license under Article 47 of Title 12, C.R.S., primarily for the sale and service of alcohol beverages for on premises consumption and where the service of food is secondary to the consumption of such beverages.

“Boulder High School Area” means the entire area between the east curb line of Broadway Street, the south curb line of Arapahoe Avenue, the west curb line of 17th Street, and the north curb line of University Avenue, provided, however, that this definition shall not apply to the public right of way associated with Hillside Road, to moving vehicles traveling on any public right of way in the area described, or unless otherwise prohibited by this Chapter, to real property that is privately owned.

“Building” means any structure enclosed for protection from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest as well.

“City Municipal Campus,” as used in this Chapter shall mean the entire area between the east curb line of 13th Street, to the east curb line of 9th Street and between the north curb line of Arapahoe Avenue and the south curb line of Canyon Boulevard, provided, however, that this definition shall not apply to moving vehicles on Broadway or 13th Street or, unless otherwise prohibited by this Chapter, to real property that is privately owned.

1 “Cigar-tobacco bar” means a bar that, in the calendar year ending December 31, 2005, generated
2 at least five percent or more of its total annual gross income or fifty thousand dollars in annual
3 sales from both the onsite sale of tobacco products and the rental of onsite humidors. In any
4 calendar year after December 31, 2005, a bar that fails to generate at least five percent of its total
5 annual gross income or fifty thousand dollars in annual sales both from the onsite sale of tobacco
6 products and the rental of onsite humidors, shall not be defined as a “cigar-tobacco bar” and shall
7 not thereafter be included in the definition, regardless of sales figures.

8 “Dwelling,” as used in this chapter, means any place used primarily for sleeping overnight and
9 conducting activities of daily living, not including a hotel or motel room or suite or bed and
10 breakfast.

11 “Downtown Boulder Business Improvement District” is as depicted in Appendix 8-B of Chapter
12 8-6.

13 “Enclosed area,” as used in this chapter, means an area which contains a structure made up of a
14 roof and two or more walls regardless of the composition of the walls or roof. This includes, but
15 is not limited to, the following: park shelters, event tents, bus shelters, patio awnings and
16 canopies.

17 “Entryway” means the outside of any doorway leading into and exiting from a building or
18 enclosed area. “Entryway” also includes the area of public or private property within fifteen feet
19 of the doorway.

20 “Mall” means the Downtown Boulder Mall as defined in Ordinance No. 4267, as amended by
21 Ordinance No. 4543 and any successor ordinance.

22 “Public,” as used in this Chapter shall mean any property that is city owned; city maintained; city
23 owned and leased to others; designated by the city as a path or trail for bicycles or pedestrians; or
24 a transit stop as defined in this section.

25 “Public conveyance” means any motor vehicle or other means of conveyance licensed by the
Public Utilities Commission of the state for the transportation of passengers for hire, and
includes, without limitation, busses, taxicabs, limousine services, and airport passenger services.

“Smoke” or “smoking” means the lighting of any cigarette, cigar, pipe, or the possession of any
lighted cigarette, cigar, or pipe, regardless of its composition.

“Tobacco product” means cigarettes, cigars, cheroots, stogies, periques, and other products
containing any measurable amount of tobacco, granulated, plug cut, crimp cut, ready rubbed, and
other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other
chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other
kinds and forms of tobacco, prepared in such manner as to be suitable for both chewing or for
smoking in a cigarette, pipe, or both for chewing and smoking. Tobacco also includes cloves,
marijuana, and any other plant matter or product that is packaged for smoking.

1 “Tobacco store” means a retail business open to the public where alcohol is not sold, if more
2 than eighty-five percent of its gross revenue from that location is from the retail sale of cigarettes
and tobacco products or products related to the use of cigarettes and tobacco products.

3 “Transit Stop,” as used in this chapter, means a public conveyance passenger waiting area
4 designated by signage attached to a post and the public right of way around the stop, including
but not limited to the bus shelter, and bench.

5 **6-4-3. Smoking Prohibited Within Buildings and Enclosed Areas.**

6 (a) No person shall smoke within any building or enclosed area except in one of the
7 following locations:

8 (1) In any dwelling. This exception does not extend to a city owned dwelling;
9 or a lobby, common elevator, common hallway or any other common area
of a building containing attached dwelling units;

10 (2) In a hotel/motel room or bed and breakfast guest room rented to one or
11 more guests if the total percentage of such smoking rooms in such
12 hotel/motel or bed and breakfast does not exceed twenty-five percent. This
exception does not extend to a lobby, common elevator, common hallway
or any other common area of a hotel/motel or bed and breakfast;

13 (3) In a tobacco store;

14 (4) In a cigar-tobacco bar which existed as of December 31, 2005, provided
15 that it does not expand its size or change its location from the size and
location in which it existed as of December 31, 2005;

16 (5) In a building or on property which is occupied by the state of Colorado,
17 the United States government, Boulder County or the Boulder Valley
School District which was not designated as a smoke free area by the
18 manager of such area. The city council urges such governmental entities to
designate smoke free areas in order to promote full access by the public
19 and protect the health of employees;

20 (6) In private homes, private residences and private automobiles; not to
21 include any such home, residence or vehicle being used for child care or
day care or a private vehicle being used for the public transportation of
children or as part of health care or day care transportation; or

22 (7) In a limousine under private hire.

23 (b) Unless excepted under subsection (a) of this section, the prohibitions of this
24 chapter apply to all buildings or enclosed areas which serve as places of work, but
25 this subsection (b) neither enlarges nor diminishes the meaning of subsection (a)
of this section.

- 1 (c) Nothing in this chapter shall prevent an owner, lessee, principal manager or
2 person in control of any place, including, without limitation, any motor vehicle,
3 outdoor area or dwelling, from prohibiting smoking completely in such place, and
4 no person shall fail to abide by such a private prohibition.

5 **6-4-3.5. Smoking Prohibited in Public Areas.**

6 No person shall smoke in a public area:

- 7 (a) in the Downtown Boulder Business Improvement District including the Mall;
8 (b) on any park, parkland or facility;
9 (c) on any open space and mountain parks property;
10 (d) on any trail, path or multi-use path and within fifteen feet of curtilage to any trail,
11 path or multi-use path;
12 (e) within twenty-five feet of a library facility;
13 (f) within twenty-feet of a transit stop;
14 (g) within the City Municipal Campus; and
15 (h) within the Boulder High School Area as defined in this Chapter.

16 **~~6-4-5.5 Smoking Prohibited on the Mall.~~**

17 ~~No person shall smoke on the Mall.~~

18 **6-4-6. Signs Required to Be Posted.**

19 To advise persons of the existence of “No Smoking” or “Smoking Permitted” areas, no owner,
20 lessee, principal manager or person in control of a building, enclosed area or an establishment
21 within a building shall fail to post signs with letters no less than one inch high or symbols no less
22 than three inches high as follows:

- 23 (1) Where smoking is prohibited in the entire establishment, a sign using the words
24 “No Smoking” or the international no-smoking symbol shall be posted
25 conspicuously either on all public entrances or in a position clearly visible on
entry into the building, enclosed area or establishment.
- (2) Where certain areas are designated as smoking areas pursuant to this chapter, a
sign using the words “No Smoking Except in Designated Areas” shall be posted
conspicuously either on all public entrances or in a position clearly visible on
entry into the building or establishment.
- (3) In tobacco stores, a sign shall be posted conspicuously either on all public
entrances or in a position clearly visible on entry into the building or

1 establishment using the words “Smoking Permitted: children under eighteen years
2 of age must be accompanied by a parent or guardian.”

3 (4) A sign using the words “No Smoking within fifteen feet of the entryway” shall be
4 posted conspicuously on all entryways of buildings, enclosed areas or
5 establishments.

6 (5) The requirements of this section do not apply to an exempt dwelling or any public
7 areas designated in section 6-4-3.5.

8 **Section 2.** This ordinance is necessary to protect the public health, safety, and welfare of
9 the residents of the city, and covers matters of local concern.

10 **Section 3.** The city council deems it appropriate that this ordinance be published by title
11 only and orders that copies of this ordinance be made available in the office of the city clerk for
12 public inspection and acquisition.
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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY

TITLE ONLY this 18th day of November, 2014.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this 3rd day of February, 2015.

Mayor

Attest:

City Clerk

**ATTACHMENT C
Proposed Alternative Ord. Language
Correcting Scrivener’s Error**

If Council desires to change Section 6-4-3.5 (f) to prevent smoking within twenty-five feet of a transit stop, the following Motion language will amend that section as shown below. A second reading amendment requires the ordinance to have a third reading.

Motion to amend on second reading Ordinance No. 8015 amending Chapter 6-4, B.R.C. 1981, adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” including electronic smoking devices in the definition of smoking, incorporating the amendment made in Attachment C, and setting forth related details;

Or in the alternative

Motion to amend on second reading Ordinance 8017 amending Chapter 6-4, B.R.C. 1981, adding a new section, 6-4-3.5 “Smoking Prohibited in Public Places,” incorporating the amendment made in Attachment C, and setting forth related details.

6-4-3.5. Smoking Prohibited in Public Areas.

No person shall smoke in a public area:

- (a) in the Downtown Boulder Business Improvement District including the Mall;**
- (b) on any park, parkland or facility;**
- (c) on any open space and mountain parks property;**
- (d) on any trail, path or multi-use path and within fifteen feet of curtilage to any trail, path or multi-use path;**
- (e) within twenty-five feet of a library facility;**
- (f) within twenty-**five** feet of a transit stop;**
- (g) within the City Municipal Campus; and**
- (h) within the Boulder High School Area as defined in this Chapter.**

Electronic Nicotine Delivery Systems (ENDS)

ENDS, including electronic cigarettes (i.e. e-cigarettes, or e-cigs) typically contain a battery-operated heating device that vaporizes a nicotine-containing solution, creating an aerosol that is then inhaled. They may be either disposable or refillable. Using ENDS is commonly referred to as vaping, and the aerosol is often referred to as vapor. Products come in over 7,000 flavors, including food and candy flavors, such as chocolate, strawberry, mint, and piña colada.



HEALTH RISKS

The safety and efficacy of ENDS have not been fully studied, though the World Health Organization has determined that there is sufficient evidence for negative implications in brain development and cautions against use by children, youth, women of reproductive age, and pregnant women. These products are not considered to be safe or effective replacements for other tobacco products.

Recent studies have found that ENDS can contain as much nicotine as a regular cigarette – or more. The liquid nicotine solution is very toxic and can potentially be spilled onto skin or accidentally swallowed.

- Cartridges generally contain up to 20 mg of nicotine. The lethal dose of nicotine for small children is approximately 10 mg.

Consistency in the manufacturing of ENDS and e-juice or e-liquid is a concern. Inconsistencies that could impact health have been found, including differing levels of nicotine from one cartridge to another in the same product.

- U.S. Food and Drug Administration (FDA) analysis of ingredients in a small sample of cartridges from two leading brands found that one contained diethylene glycol, a toxic chemical used in antifreeze, and several others contained carcinogens, including nitrosamines.
- Some electronic devices claim to be nicotine-free. In tests of several of them, however, all but one had measurable levels of nicotine present.
- Refillable ENDS may make it possible to refill cartridges with liquid marijuana or other substances, including homemade e-liquids. Serious injuries have occurred when the devices were modified or filled with liquids that were not compatible with the heating element temperature.

LAWS & REGULATIONS

E-cigarettes are not currently regulated by the FDA. They do not contain any health warnings comparable to FDA-approved nicotine replacement products or conventional cigarettes. It is illegal for youth under 18 to buy or possess them in Colorado; it is also illegal for adults to sell or give them to anyone under 18.

AS NICOTINE REPLACEMENT THERAPY

Nicotine replacement therapy (NRT) is for temporary use as a smoking cessation aid. FDA-approved NRT exists in a variety of forms, including: dermal patches, gum, lozenges, and inhalers. These products all have standardized amounts of nicotine, and undergo rigorous quality control.

ENDS are marketed as a means to avoid discomfort from smoke-free laws, and to continue nicotine use in places where traditional smoking is not allowed. They are not subject to quality control requirements, and have been demonstrated to have wide variability across brands and products, including containing levels of nicotine significantly different from the labelled amount. Continuous exposure to nicotine deepens addiction, and makes quitting nicotine more difficult for current tobacco users. Watching someone else use ENDS has been found to trigger cravings in former smokers, and may increase relapse.

“If large numbers of adult smokers become users of both traditional cigarettes and e-cigarettes — rather than using e-cigarettes to quit cigarettes completely — the net public health effect could be quite negative.” Dr. Tim McAfee, Director of the Office on Smoking and Health, Center for Disease Control and Prevention (CDC)

SECONDHAND AEROSOL

Aerosol from ENDS can contain nicotine, heavy metals, nitrosamines, and a variety of other chemicals and ultrafine particulates, depending on the liquid used and the temperature of the heating element. It dissipates faster than secondhand cigarette smoke, though exposure patterns are not well studied. One study has demonstrated that bystanders were exposed to the same level of nicotine as the user, through secondhand aerosol. Though it may be marketed as water vapor, ENDS aerosol has consistently been demonstrated to contain more than water.

YOUTH

Unrestricted advertising, appealing flavors, messages of freedom, rebellion, and discretion, low prices, and ready availability have led to over a quarter of a million middle and high school students that had never smoked a cigarette using e-cigarettes in the United States in 2013. Of those, almost half reported that they intended to use conventional cigarettes in the next year, according to the CDC. Youth respond strongly to advertising, price, and behavior modeling from parents, peers, and community members.

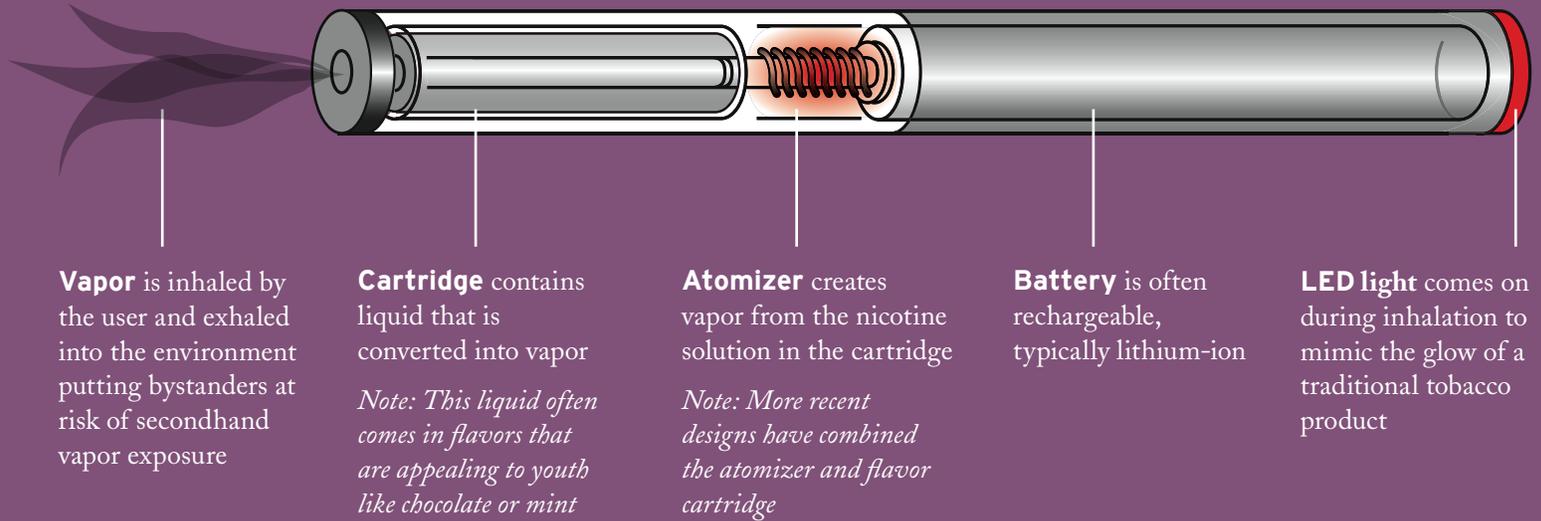
To learn more about ENDS, and other tobacco-related products and issues, please contact Boulder County Tobacco Education and Prevention Partnership (TEPP) staff at 303.413.7524.

Regulating Toxic Vapor

A Policy Guide to Electronic Smoking Devices

This fact sheet provides information about the public health concerns related to electronic smoking devices, the steps that have been taken to regulate electronic smoking devices, and what additional measures communities can take to limit access to and the availability of electronic smoking devices.

Electronic smoking devices (also known as “electronic cigarettes,” “e-cigarettes,” “electronic nicotine delivery systems,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” “hookah pens,” etc.) are battery operated devices often designed to look like and be used in a similar manner to conventional tobacco products.¹ Electronic smoking devices are used to inhale a vaporized liquid solution that frequently, though not always, contains nicotine. Because the liquid solution is converted into vapor, electronic smoking device use is sometimes referred to as “vaping,” rather than smoking. The increasing popularity of electronic smoking devices, combined with loopholes in some existing tobacco control laws, have the potential to renormalize tobacco use.²



Policy Rationales for Restricting the Availability & Use of Electronic Smoking Devices

Hazardous Contents

Liquid solutions have addictive levels of nicotine sometimes 20 mg or higher³ and contain potentially life-threatening carcinogens and toxic chemicals.^{4,5} More than one study, including one conducted by the U.S. Food and Drug Administration (FDA), have found that electronic smoking devices contain a number of dangerous substances including tobacco-specific nitrosamines, which are human carcinogens;⁶ tobacco-specific impurities suspected of being harmful to humans like anabasine, myosmine, and β -nicotyrine;^{7,8} and inconsistent labeling of nicotine levels in electronic smoking device products.^{9,10} In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found.¹¹



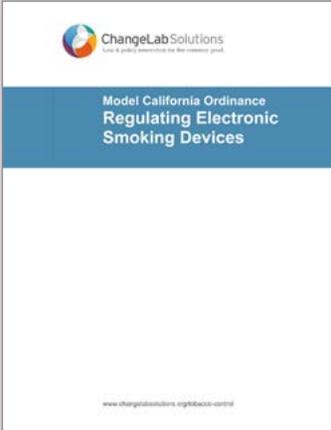
ChangeLab Solutions

Law & policy innovation for the common good.

This fact sheet includes information about model language ChangLab Solutions has developed to assist California cities and counties interested in regulating electronic smoking devices. ChangeLab Solutions’ model ordinances offer a variety of policy options that can be tailored to the specific goals and needs of a particular community. For more information, please visit www.changelabsolutions.org/landing-page/model-policies.

While ChangeLab Solutions’ *Model California Ordinance Regulating Electronic Smoking Devices* was designed for

California communities, it can be adapted for use in other states. It is important to carefully review the existing law in your state, to understand the allowable regulations of other tobacco products, like electronic smoking devices. The best way to do this is to consult with an attorney licensed in your jurisdiction.



Exposure to Secondhand Vapor

The composition of the vapor emitted by an electronic smoking device has been found to contain several carcinogens, such as formaldehyde, acetaldehyde, lead, nickel, and chromium.^{12,13,14} Additionally, electronic smoking devices have been found to contain other hazardous substances such as PM_{2.5}, acrolein, tin, toluene, and aluminum,^{15,16,17} which are associated with a range of negative health effects such as skin, eye, and respiratory irritation,^{18,19,20,21} neurological effects,²² damage to reproductive systems,²³ and even premature death from heart attacks and stroke.²⁴

Though the quantity of these harmful compounds contained in the vapor emitted by electronic smoking devices is often less than what is found in traditional cigarette smoke,^{25,26} at least sodium, iron, aluminum, and nickel have been found in *higher* concentrations in emitted vapor than in cigarette smoke.^{27,28}

This is especially troubling given that more than one peer reviewed study has concluded that exposure to vapor from an electronic smoking devices may cause passive or secondhand vaping.^{29,30,31}

Attachment D Electronic Cigarette Fact Sheets

Rapid Growth in Popularity

There are over 400 brands of electronic smoking devices on the market.³² Awareness levels of electronic smoking device products among the general population has increased dramatically, from between 40.8 and 44.1 percent in 2010, to 60.9 percent in 2011.³³ Further, the number of current smokers who have ever used an electronic smoking device more than doubled between 2010 and 2011, with 21.2 percent of current smokers reporting they have tried electronic smoking devices in 2011.³⁴

Youth Appeal

The increase in use of electronic smoking devices among youth grades 6 to 12 is troubling. In 2012, 6.8 percent of all youth between 6th and 12th grade reported trying electronic smoking devices and 10 percent of high school students have tried them.³⁵

Between 2011 and 2012, the percentage of all youth in grades 6 to 12 who had tried electronic smoking devices doubled.³⁶

The solutions used in electronic smoking devices are often made in tempting flavors like chocolate and mint and are promoted as being healthy and environmentally friendly,³⁷ making them especially alluring to youth.³⁸ Recent national analyses of electronic smoking device users have indicated that young adults tend to be more likely to have tried them,³⁹ and that the perception of electronic smoking devices among smokers is that they are a safe alternative to cigarettes.⁴⁰

Some Electronic Smoking Devices Do Not Contain Tobacco

While many electronic smoking devices contain nicotine, some devices claim to be 100 percent nicotine and tobacco free.

Determining which electronic smoking devices are truly nicotine free may be difficult for local tobacco control enforcement, given that manufacturers are not required to disclose the ingredients that make up the liquid solution used in electronic smoking devices. Further, product testing has revealed that the information and ingredients listed on the packaging of electronic smoking devices can be misleading or incorrect.⁴¹

In some cases, vapor lounges or individuals create their own liquid solutions, and there is no way to be sure these homemade solutions are properly labeled or even safe for consumption. For these reasons, local jurisdictions may wish to regulate all electronic smoking devices, whether or not they contain nicotine. If so, communities will need to craft their policies carefully to ensure that all the products they wish to regulate are adequately covered (see the section, *Policy Options for Regulating the Use & Sale of Electronic Smoking Devices*, on page 5).

Renormalization of Tobacco Use

As electronic smoking devices are used in places where tobacco products' use has previously been prohibited, such as workplaces, restaurants, and bars, and as marketing of electronic smoking devices expands into outlets where other tobacco products are prohibited such as television commercials,⁴² electronic smoking devices have the potential to renormalize tobacco use. By encouraging experimentation with tobacco, especially among youth, electronic smoking devices have the potential to increase nicotine addiction among young people⁴³ and serve as a gateway to other tobacco products.⁴⁴

Lack of Regulations Ensuring Safety & Quality Control

Electronic smoking devices have often been represented as a safe alternative to cigarettes. However, there are significant concerns about the safety of these products. For example, the vapor inhaled by electronic smoking device users often contains nicotine levels that are inconsistent with their labeling. Two separate studies found that the nicotine levels of two individual products from different manufacturers were over 20 percent higher than what their labeling indicated.^{45,46}

Additionally, some cartridges can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.⁴⁷ A recent analysis of electronic smoking device refill liquids found that “[t]he bottles of e-liquid are dangerous as they contain up to 720 mg of nicotine,” which is a potentially lethal amount of nicotine.⁴⁸

Poisonings from electronic smoking devices have increased dramatically in the last three and half years from “one [a month] in September 2010 to 215 a month in February 2014.”⁴⁹

Analysis of reports of poisonings from electronic smoking devices finds that people are more likely to report adverse health effects when compared to traditional cigarettes.⁵⁰

Clinical studies about the safety and efficacy of electronic smoking devices for their intended use have not been submitted to the FDA.⁵¹ This means that consumers have no way of knowing whether electronic smoking devices are safe for their intended use, what types or concentrations of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.



Public Health Support for the Regulation of Electronic Smoking Devices

The World Health Organization has strongly advised consumers against the use of electronic smoking devices until they are “deemed safe and effective and of acceptable quality by a competent national regulatory body.”⁵² The World Medical Association has determined electronic smoking devices “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established.”⁵³

Moreover, the State of California’s Tobacco Education and Research Oversight Committee (TEROC) “opposes the use of [electronic smoking devices] in all areas where other tobacco products are banned.”⁵⁴

The Legal & Regulatory Landscape

In many places, electronic smoking devices are completely unregulated. However, there is a growing patchwork of laws throughout the U.S. that regulate how electronic smoking devices are sold and, in some cases, where they are used. Here is an overview of the laws governing electronic smoking devices, as of May 2014. The current gaps in regulation are highlighted and the policy options available to local governments are explained.

At the Federal Level

As of February, 2014, the only existing federal restrictions on electronic smoking device use are as follows:

- The U.S. Department of Transportation interprets existing federal regulations against smoking on airplanes to apply to electronic smoking devices.⁵⁵
- The U.S. Air Force and U.S. Navy have both stated that their existing regulations governing tobacco use will apply to electronic smoking devices.^{56,57}

The 2009 Family Smoking Prevention and Tobacco Control Act (“the Tobacco Control Act”), which regulates the manufacturing and marketing of tobacco products, does not apply to electronic smoking devices, nor are electronic smoking devices subject to federal taxes. Therefore, no federal regulations currently exist for electronic smoking devices. There are also no federal regulatory standards for safety or quality control for electronic smoking devices before they can be sold to consumers. Under federal law, it is entirely legal to sell electronic smoking devices to children. Electronic smoking device advertisements are routinely seen on television, where conventional tobacco advertisements have not been seen for decades, and electronic smoking device manufacturers may freely introduce new products that have not been evaluated for safety.

The FDA issues the “deeming rule”

On April 25, 2014, the FDA took a significant step toward regulating these products by releasing its proposed “deeming rule,” which would extend the agency’s regulatory authority to a variety of tobacco products, including electronic smoking devices.⁵⁸ Although the Tobacco Control Act does not explicitly list all tobacco products by name, Congress gave FDA authority to issue a regulation deeming that any or all tobacco products are covered by the Tobacco Control Act. If the proposed deeming rule is finalized, it would extend several provisions of the Tobacco Control Act to electronic smoking devices. These provisions include the federal prohibition on sales to minors, the federal prohibition on free sampling, federal warning label requirements, and the requirement that tobacco manufacturers register with the FDA and seek the agency’s review of new tobacco products.

Attachment D Electronic Cigarette Fact Sheets

Until such time as the deeming rule is adopted, the FDA’s Center for Tobacco Products does not have authority to regulate the sale or use of electronic smoking devices as tobacco products. The FDA Center for Drug Evaluation and Research has limited authority to regulate electronic smoking devices as drugs or devices, but only if they are marketed for therapeutic purposes.⁵⁹

The popularity of electronic smoking devices has boomed, and calls to regulate them have increased at all jurisdictional levels.

The FDA’s proposed deeming rule must go through a public notice and comment process before the agency can implement the rule, and the FDA will likely make changes to the rule in response to this process. Given the large volume of comments the agency has received, it will take at least a year, if not longer, for the FDA to implement the final rule. Thus, it is unclear when the FDA will release final regulations on electronic smoking devices.

The Deeming Rule & Preemption

Many jurisdictions have questions about whether the FDA deeming rule would affect state or local laws. The proposed deeming rule makes clear that state and local governments can continue to adopt and enforce laws relating to tobacco product sales, use, distribution, and advertising (within constitutional limitations). According to the deeming rule, these state and local laws can be “in addition to, or more stringent, than the requirements of the Tobacco Control Act and its implementing regulations.”⁶⁰ For example, the deeming rule would not affect states’ and localities’ ability to pass laws regulating where electronic smoking devices can be used, taxing electronic smoking devices, or requiring retailers to obtain a local license to sell electronic smoking devices. The deeming rule does identify some areas where local and state action could be preempted if the rule is finalized as written, including laws relating to manufacturing standards and labeling.



At the State Level

In California, it is illegal to sell or otherwise furnish an electronic smoking device to a person under 18 years of age. For purposes of this state law, an electronic device is defined as a device that can deliver a dose of nicotine to the user through a vaporized solution.⁶¹ Local law enforcement agencies have the general authority to enforce this law under California Penal Code Section 830.1. Violators are subject to a fine of up to \$200 for a first violation; \$500 for a second violation; and \$1,000 for a third or subsequent violation.

The California smokefree workplace law, by contrast, does not expressly prohibit the use of electronic smoking devices in enclosed workplaces.⁶²

Local Policy Options for Regulating the Use & Sale of Electronic Smoking Devices

Regulating Use

Because the California state smokefree workplace law does not expressly prohibit the use of electronic smoking devices in places covered by that law,⁶³ many California communities are interested in prohibiting electronic smoking device use wherever conventional smoking is already prohibited. As discussed, it has been found that electronic smoking device vapor contains a variety of substances that are known to be toxic or carcinogenic. When electronic smoking devices are used in public places, bystanders may be involuntarily exposed to those chemicals resulting from secondhand vapor.

There is also considerable concern that the use of electronic smoking devices in places that are covered by a smokefree air law hinders enforcement of those laws.⁶⁴ Certain types of electronic smoking devices are often hard to distinguish from conventional cigarettes, and the confusion that results from inconsistently allowing their use in places where smoking is prohibited could have a chilling effect on enforcement of those laws altogether.⁶⁵ Relaxed enforcement of smokefree air laws could open the door for people to smoke conventional tobacco products in violation of smokefree laws without fear of consequences. Allowing electronic smoking device use in places that are otherwise smokefree also bears the risk of “re-normalizing” tobacco use, giving the mistaken impression that electronic smoking devices are safe or healthy rather than simply “less dangerous” than conventional cigarettes.⁶⁶

There are different ways for local governments to regulate electronic smoking device use. The most appropriate solution depends on whether there is an existing law in the jurisdiction that regulates smoking, and what the scope of any such law is.

Attachment D Electronic Cigarette Fact Sheets

The first step in regulating electronic smoking device use is therefore to review your local laws that govern smoking. In some cases, electronic smoking devices may actually be covered by an existing smokefree law.

To determine whether electronic smoking devices are covered by an existing smokefree law, look to see if the ordinances definition of “smoke” is broad enough to cover vapor or aerosol, or if the definition of “smoking” expressly includes the use of electronic smoking devices, electronic cigarettes, electronic nicotine delivery systems, personal vaporizers, etc.

If it is determined that a jurisdiction’s existing smokefree air law already applies to electronic smoking devices, the next step is to determine if that law is being enforced. It’s possible that law enforcement may not be aware that the law applies to electronic smoking devices.

Amending an existing smokefree air law

For California jurisdictions that already have a local smokefree air law, one way to address electronic smoking devices is to amend the definitions of “smoke” and “smoking” in the law to explicitly include “electronic smoking device vapor” and “electronic smoking device use.” For model definitions of “smoke” and “smoking” that cover electronic smoking devices, see ChangeLab

More than one peer reviewed study has concluded that exposure to vapor from a electronic smoking devices may cause passive or secondhand vaping.^{67,68,69}

Solutions’ *Model Comprehensive Smokefree Places Ordinance*.⁷⁰ Advocates who take this approach should be mindful of the fact that opening up any law to add an amendment gives potential opponents the opportunity to weaken it. For example, opponents might try to narrow the scope of places where smoking is prohibited.

In California, many cities and counties have smokefree air laws that cover some outdoor areas, but do not cover indoor workplaces, which are smokefree under state law. If one of these cities were to amend its ordinance to cover electronic smoking devices merely by updating its definitions of “smoke” and “smoking”, it would still not cover electronic smoking device use in indoor workplaces because the change still only applies to those places covered by *local* law. For this reason, in addition to updating its definitions of “smoke” and “smoking”, the jurisdiction would also need to amend its local smokefree air law to expressly prohibit the use of electronic cigarettes in those places of employment covered by the state smokefree workplace law.

Attachment D Electronic Cigarette Fact Sheets

Adopting a stand-alone law

Another option is to pass a stand-alone law specifically to prohibit electronic smoking device use in any place where smoking is prohibited by law. The advantage of this approach is that it provides a catch-all to regulate electronic smoking device use in exactly the same way as conventional tobacco use, regardless of whether existing smokefree air laws are local, state, or federal, and would apply prospectively to any future smokefree air laws passed in that jurisdiction. This approach does not require any existing law to be amended, reducing the likelihood that opponents could use the opportunity to weaken or repeal it. For model language prohibiting electronic smoking device use in places where smoking is prohibited, see ChangeLab Solutions' *Model California Ordinance Regulating Electronic Smoking Devices*.⁷¹

Adopting a new smokefree air law & working with private companies

Finally, there are some jurisdictions where there may not yet be a local smokefree air law. These jurisdictions are completely free to include electronic smoking devices in any smokefree air law drafted in the future.

It's important to remember that many locations are also subject to voluntary smokefree policies created by individual property owners/managers or businesses. For example, the Starbucks Coffee Company prohibits smoking in all outdoor seating areas in its cafes.⁷² Many hotel chains, such as Marriot and Westin, have also adopted policies to prohibit smoking entirely on their premises.⁷³ Private entities have a free hand to prohibit electronic smoking device use, and communities can work with them to develop or enhance such policies.

To help determine the most appropriate solution for a specific community to address electronic smoking device use, ChangeLab Solutions has developed a visual flow chart, which is available on our website at: www.changelabsolutions.org/publications/e-cig-ord.

Regulating Sales

In California, localities can regulate how electronic smoking devices are sold in a variety of ways, up to and including prohibiting the sale of electronic smoking devices altogether. In practice, when deciding precisely how to regulate electronic smoking devices, many jurisdictions seek to achieve consistency with existing laws governing conventional cigarettes and other tobacco products.

For example, jurisdictions may: prohibit the sale of electronic smoking devices to minors and require retailers to check ID; require retailers to keep electronic smoking device paraphernalia/accessories behind the counter; and prohibit the distribution of free samples of electronic smoking devices.

As of May 2014 "71 cities and counties in California [require] retailers to obtain a license to sell e-cigarettes."⁷⁴

Any jurisdiction wishing to regulate sales of electronic smoking devices should first become familiar with the scope of existing laws regarding tobacco. It is possible that existing laws regulating tobacco sales (e.g. a local tobacco retailer licensing law) already apply to electronic smoking devices. To determine whether an existing sales restriction applies to electronic smoking devices, look to the definitions in the law ("tobacco," "tobacco product," etc.). In many cases, a law has a very inclusive definition of tobacco that includes all products that contain nicotine (and would therefore apply to electronic smoking devices that contain nicotine, or that are packaged with cartridges or e-liquid containing nicotine). In other cases, electronic smoking devices may be mentioned directly. If it is determined that existing tobacco laws in a jurisdiction already apply to electronic smoking devices, the next step is to determine if those laws are being enforced. It's possible that law enforcement may not be aware that the law(s) apply to electronic smoking devices.

Amending an existing tobacco retailer licensing law

In cases where a local jurisdiction has an existing law governing tobacco sales that does not apply to electronic smoking devices, it is possible to amend that law to cover those products. One way to do this is to broaden the definitions of "tobacco product" and "tobacco paraphernalia," to cover electronic smoking devices and their associated products, such as e-liquid. This can be done simply by referencing these products by name in the definitions.



For model definitions that cover electronic smoking devices in this way, contact ChangeLab Solutions for assistance.* The advantage of this approach is that it is a simple way to uniformly and consistently apply a variety of tobacco laws to electronic smoking devices.

However, there are some reasons to be cautious with this approach. For example, opening up an existing law to the amendment process creates an opportunity for opponents of the law to limit the law's scope to (for instance) exempt certain types of products from the definition of "tobacco product" like new dissolvable tobacco or nicotine lozenges. This approach is also problematic in that it only affects the laws of the specific jurisdiction. If a city or county has a law prohibiting tobacco vending machines, and they amend the definition of "tobacco product" in their municipal code so that it includes electronic smoking devices, it would not address regulatory gaps at the state level, e.g. a state law like California's which prohibits self-service displays of tobacco products but does not prohibit self-service displays of electronic smoking devices.

Adopting a stand-alone law

In lieu of amending an existing tobacco retailer licensing law, a jurisdiction can adopt a stand-alone ordinance that regulates electronic smoking device in all the same ways that conventional tobacco products are regulated. For example, local governments can require retailers to check the ID of people who purchase electronic smoking device, prohibit self-service displays of electronic smoking devices, and prohibit retailers from giving out free samples to the public. Several states including California⁷⁵ have passed stand-alone laws that prohibit the sale of electronic smoking devices to minors. Many local governments in jurisdictions around the country have passed similar laws.⁷⁶ For communities that are interested in stand-alone laws such as these, see ChangeLab Solutions' *Model California Ordinance Regulating Electronic Smoking Devices* as a reference.⁷⁷

* Note, in some cases a jurisdiction may wish to regulate only those electronic smoking devices that contain nicotine or that can be used to deliver nicotine. This can be done by amending the definition of "tobacco product" to include all products containing nicotine that is either derived from tobacco or synthetically produced, and by changing the definition of tobacco or smoking-related "paraphernalia" to include devices that can be used to deliver a tobacco or nicotine product. For more on this approach, see ChangeLab Solutions' *Model Tobacco Retailer Licensing Ordinance* at: www.changelabsolutions.org/publications/model-TRL-Ordinance

Attachment D Electronic Cigarette Fact Sheets



Adopting a new tobacco retailer licensing (TRL) law

Local jurisdictions that don't already have a tobacco retailer licensing law might consider adopting one that covers both traditional tobacco products and electronic smoking devices and the various liquids sold with them as tobacco products and tobacco or smoking paraphernalia. Tobacco retailer licensing laws require retailers to abide by all applicable local, state and federal tobacco laws in order to maintain their license, and can contain a wide variety of additional conditions. For example, a TRL law may require retailers to agree not to sell electronic smoking devices to minors, to keep all electronic smoking devices behind the counter, or to agree not to give out electronic smoking device samples to prospective customers.

The advantage of including electronic smoking devices in a TRL law is that the requirements for tobacco retailing can be consistently applied to electronic smoking devices and other tobacco products in a uniform way, simplifying and streamlining enforcement. There are numerous city and county governments which have enacted TRL laws that apply to electronic smoking devices along with all other tobacco products.⁷⁸ For more information about tobacco retailer licensing, see *License to Kill? Tobacco Retailer Licensing as an Effective Enforcement Tool*, as well as ChangeLab Solutions' *Model Tobacco Retailer Licensing Ordinance*.⁷⁹

Taxing Electronic Smoking Devices

Finally, it may be possible for state and/or local governments to levy taxes on electronic smoking devices. In most jurisdictions, electronic smoking devices are currently not taxed the way that cigarettes and other tobacco products are, and federal law does not preempt state or local governments from taxing electronic smoking devices.

Numerous studies have shown that one of the most clearly effective ways of reducing tobacco use, particularly among minors, is to increase the price of those products.⁸⁰ Not only do higher excise taxes on tobacco products lower rates of use, but they also create a source of revenue that can be used to offset health costs related to tobacco and to fund public health efforts.⁸¹

If there is not an existing state or local law that levies a tax on electronic smoking devices, it may be possible to enact one in order to bring taxes on these products more in line with the taxes on conventional cigarettes and/or other tobacco products. Policy questions that may arise include how to set the taxation rate given the many different forms in which electronic smoking devices and their components are sold, and whether the taxation rate should be lower than the rate for conventional tobacco products. Minnesota is the first state in the country to tax electronic smoking devices as a tobacco product. Although the law itself does not explicitly mention electronic smoking devices, the definition of “tobacco products” is broad enough to cover any product that contains or is derived from tobacco.⁸² The Minnesota Department of Revenue has issued a notice clarifying that in its opinion the tobacco products tax applies to electronic smoking devices.⁸³ As of January 2014, several other states are considering this strategy, for example Delaware, Maine, Massachusetts, New Mexico, Oklahoma, and Utah.⁸⁴

How We Can Help

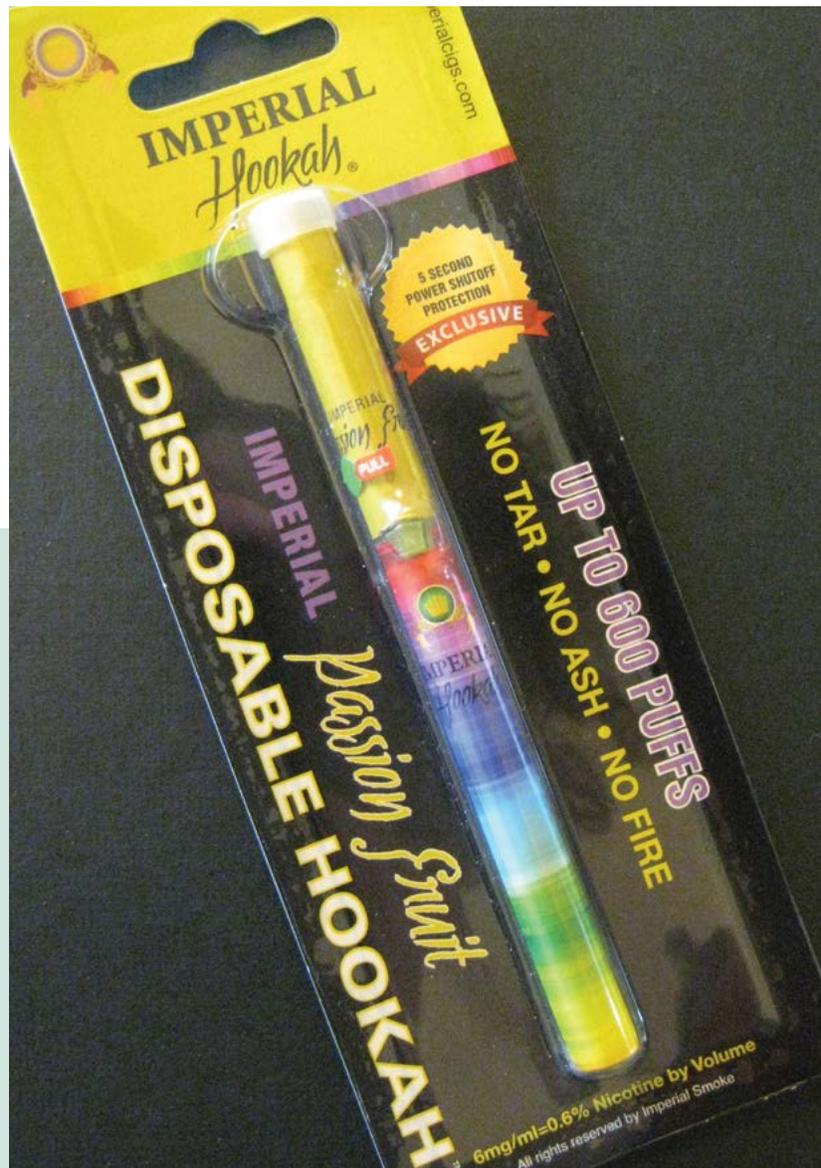
Additional materials related to electronic smoking devices are available on our [website](#) including our *Model California Ordinance Regulating Electronic Smoking Devices*.

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Electronic Smoking Devices & the Minnesota Department of Revenue

In October, 2012, the Minnesota Department of Revenue clarified its position that the state’s tobacco products tax applies to electronic smoking devices. More specifically, the notice states that electronic smoking devices (or any components thereof) that contain nicotine constitute tobacco products under the assumption that all nicotine is derived from tobacco. Products containing nicotine that are not derived from tobacco are exempt from the tax; however, the burden is on the taxpayer to prove this to the department. Furthermore, the sales price of an entire electronic smoking device “kit” or package is subject to the tax unless a wholesaler sells the nicotine-containing component (such as a cartridge or liquid bottle) separately and can isolate the cost of the product.

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Attachment D Electronic Cigarette Fact Sheets

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Attachment D Electronic Cigarette Fact Sheets



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE: Consideration of a motion to authorize the City Manager to enter into a Memorandum of Understanding (MOU) between the Central Area General Improvement District (CAGID) and Trinity Lutheran Church of Boulder, Colorado, regarding the feasibility of a public/private partnership for parking at the Trinity Commons project in downtown Boulder.

PRESENTER/S

Jane S. Brautigam, City Manager
David Driskell, Executive Director, Community Planning and Sustainability
David Gehr, Deputy City Attorney
Hella Pannewig, Assistant City Attorney
Molly Winter, Director, Downtown and University Hill Management Division and Parking Services (DUHMD/PS)
Kurt Matthews, Parking Manager, DUHMD/PS
Donna Jobert, Financial Manager, DUHMD/PS

EXECUTIVE SUMMARY

The purpose of this agenda item is to authorize the City Manager to enter into a Memorandum of Understanding (MOU) (**Attachment A**) with the Trinity Evangelical Lutheran Church of Boulder, Colorado (Trinity Lutheran) and the Central Area General Improvement District, (CAGID), for CAGID to finance, own and manage 55 underground parking spaces as a part of the church's Trinity Commons project. Trinity Commons includes senior affordable housing, congregational and office space for the church and underground parking. Trinity Lutheran would retain access to parking under terms specified in the MOU. The project has received city planning approvals.

According to Trinity Lutheran, the senior affordable housing component will only be possible if CAGID participates as a partner to build and manage the underground parking. If CAGID is not a partner, the church cannot finance the underground parking

and the project would build additional church related uses only, without the senior housing, retaining the remainder of the site for surface parking for their congregation.

Final agreements as outlined in the MOU, such as forming a Condominium Association, would return to City Council.

As downtown Boulder continues to evolve, grow and thrive, additional access solutions and resources will be needed. 2015 brings unique challenges that require innovative, multi-faceted approaches incorporating all travel modes. Future parking solutions will be opportunistic, dispersed and come in smaller chunks. The collaborative partnership between CAGID and Trinity Lutheran is a timely opportunity and is an example of an Access and Parking Management Strategy (AMPS) District Management strategies: public/private partnerships for shared parking.

STAFF RECOMMENDATION

Suggested Motion Language:

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

The City Council, acting as the board of directors of CAGID, authorizes the City Manager to enter into a Memorandum of Understanding, as substantially represented in Attachment A, between CAGID and Trinity Lutheran Church regarding public/private partnership for the provision of parking as part of the Trinity Commons project located at Broadway and Pine in downtown Boulder.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The project would support the long term economic viability of downtown by providing additional parking demand as part of the overall downtown access options including transit, biking, walking and parking management.
- Environmental – The downtown access strategy includes a balance of multi-modal options that are in line with the city’s sustainability goals.
- Social – Providing a variety of multi-modal options ensures a viable downtown. CAGID participation in the Trinity Commons project will enable the senior affordable housing component of the project to be financially feasible as well as providing parking to the congregation of Trinity Lutheran.

OTHER IMPACTS

- Fiscal – The financing of the project would be covered by CAGID’s existing fund balance. A major portion of the projected total costs is within the approved 2015 budget.
- Staff time – Work on this project would be incorporated into the existing work plan.

BOARD AND COMMISSION FEEDBACK

Downtown Management Commission unanimously supported the proposal for CAGID to

partner with the Trinity Lutheran Church to provide parking as part of the Trinity Commons Project at their meeting on January 5, 2015.

BACKGROUND

In early 2014, discussions began with Trinity Lutheran Church and their agent Element Properties regarding CAGID's participation in providing parking as a part of their development (Trinity Commons) of the church's parking lot at the southwest corner of Broadway and Pine which is just outside the CAGID boundary. During the week, the 70 surface parking lot spaces are leased to downtown employees.

The church has been approved to build senior affordable housing units, additional congregational and office space with parking underneath. An agreement was discussed, see attached Memorandum of Understanding (MOU) (**Attachment A**), for CAGID to construct and own 55 parking spaces with provisions for the church's use on specific occasions. The church would contribute their land and CAGID would build the parking. The estimated cost, \$1.7 million, was approved in the 2015 budget allocating funds from the CAGID fund balance.

Subsequently, the cost estimate was updated and the construction costs for the parking portion increased from \$1.7 million or \$30,909 per space to \$2.5 million or \$45,848 per space for hard construction costs. The cost soft allocation is \$334,180 or \$6,076 per space. The total cost is \$2,855,820 or \$51,923 per space; a difference of \$1,155,820. In addition, CAGID would be responsible for providing the gate access equipment, estimated at approximately \$50,000.

Trinity Lutheran presented a cost allocation estimate between the three components of the project (senior housing, church functions and CAGID parking). CAGID hired BuildMark, a construction project management and cost estimating firm in Denver, who reviewed the cost allocation and cost estimate. (See **Attachment B**) Their analysis concluded that the cost allocations were fair and justified; however, they felt the construction costs were higher than what they were experiencing in Denver. In response, Chris Jacobs from Element Properties presented recent costs for underground parking spaces in Boulder:

- 1707 Walnut, constructed by Brinkman Partners. Total hard cost ~\$1.6M, 26 spaces, \$61,500 per space
- CU Stadium parking garage, constructed by Mortenson, Total spaces: 534, cost per space \$42-45K. The contractor, in response to a request from Steve Theweatt at CU, said that given the smallness of the project at Trinity Commons, the cost of \$50-\$55,000 seems reasonable.

Outreach by staff to the contractors of the Pearl West project in downtown Boulder indicated the hard costs per space are estimated at \$50,000.

Without the participation of CAGID, Trinity Lutheran will not proceed with the construction of the affordable senior housing. The project would downsize and include the additional congregational space and church offices. In order to accommodate their

congregation, the church needs to maintain on-site surface parking since most of its members drive as they live outside of Boulder. (**Attachment C** Letter from Trinity Lutheran Church.)

ANALYSIS

MOU

The purpose of the MOU between Trinity Lutheran and CAGID is to provide a framework for the parties to negotiate in good faith the definitive agreements for the construction, development and operation of the parking structure and the creation of the ownership interests. The MOU is not intended to constitute the definitive and ultimate binding agreement. The anticipated subsequent agreements include: development and ownership agreement, construction agreement, parking structure operation agreement, the condominium association declaration and map, and associated organizational documents. In the MOU, the church will provide the land for the parking structure at no cost; CAGID will finance, construct and manage the parking and will be responsible for all garage operating costs and common area maintenance. Trinity Lutheran will have the right to purchase five parking permits and will have the use of the parking at no cost from 6am to 10pm on all Sundays and on Christmas and after 3pm on Christmas Eve. In addition the church will have access to a set amount of vehicle entries during the week, Monday through Thursdays, after 5pm for the use of their congregation. Trinity Lutheran retains the air rights above the garage for future development.

ACCESS AND FINANCIAL ANALYSIS

Presented below are the various factors for consideration including current CAGID parking and access demand and utilization, the financial condition of CAGID, the projected revenues from the proposed project, future access demand projections and options and strategies to address CAGID's future needs.

Current Demand and Utilization

There are several factors considered in assessing current downtown access and parking demand: the utilization of parking spaces, the status of the parking permit wait list, purchase of parking products such as the punch card, and the percentage of access to the downtown with alternative modes of transportation. Below is a summary of these different indicators.

Multi-Modal Access

Parking is one component of the downtown multi modal access system which includes transit, bikes and walking. The 2014 Downtown Intercept Survey conducted in the fall of 2014 indicates that 56% arrived by car, 19% walked, 9% arrived by bus, 9% rode a bike and 9% other. The biannual Downtown Employee Survey provides data regarding employee travel modes. Past surveys have indicated an alternative mode use by downtown employees as high as 64%. In the first quarter, the updated 2014 downtown employee survey data will be available.

Parking Permits and Products

The garage wait lists are an indicator of downtown employee parking demand and have increased steadily since 2012 (297) to November 2014 (1,266). In December 2014, the wait list jumped to 1,410. While there is a practice of businesses signing up for the wait lists on multiple garages, what is evident is the overall trend of increasing demand for permits.

In order to address the permit demand and provide greater flexibility, a punch card option is offered priced between short term parking rates and long term permits. The punch cards provide a daily parking option in the garages and were designed to provide flexibility for employees to choose between a variety of modes – drive one day, bike the next, and then take the bus. However, observed utilization is that the punch cards are being used as a surrogate for permits. The data regarding the purchase of punch cards indicates a steady increase: in 2012, 428 cards were sold; in 2013, 1540 were sold and in November 2014, 2,225 were sold. In fact, the sale of punch cards was suspended to employers during the 2014 holiday season in order to ensure enough short term parking spaces for shoppers at the 15th and Pearl garage. In 2015, limits are placed on the number of punch cards available to businesses.

Parking Occupancy

Downtown public parking operates at a high level of occupancy. As indicated in **Attachment D**, an excerpt from a report prepared by Fox Tuttle Hernandez, the mid day utilization on-street is between 85% to 90%, employee surface lots at 95%, and the garages: three are between 91% and 96%, and two are between 71% and 75%.

Downtown parking demand and occupancy varies by time of day by season of the year and by garage. During 2014, average garage occupancy has varied from 98% to 21%. In 2013, Fox Tuttle Transportation Engineers averaged occupancy of all public parking – on-street, off-street, lots etc. to have at 74% occupancy.

All of the five garages accommodate short term (visitor, client, and customer) parking and long term permit (employee) parking. It is essential to maintain a balance of providing spaces for all users. Permit parking is oversold; that is to say more permits are sold than those allocated. Permits are sold to 98% of all the spaces. The utilization reflects the actual use of permit parkers – including days that employees are sick, on vacation or are taking other modes to work, part time workers and those working flexible schedules. Staff closely monitors the parking occupancy in order to accommodate the short term demand at peak times. Peak times in the downtown cycle are May for CU graduation, August at the beginning of the school year and the Christmas holiday. Parking is managed in order to ensure adequate supply for these peak demand times that reflect events and activities in the downtown such as the Boulder International Film Festival.

Parking demand is closely tied to the economic health and vitality of downtown. During the economic downturn, there was a greater level of office vacancy (8.5%) and the wait list for permits was at an all time low of 113. In 2014, office vacancy was at 2.65% which increases both short and long term demand; the parking waitlist is currently 1,410.

And a recent trend in the increase of employees per square foot in technology and start up firms is also increasing demand.

Future CAGID Development Projections and Access Demand

Based on the 2013/2014 RRC and Fox Tuttle Hernandez (FTH) analysis and projections of downtown future development and access demand, the parking demand in downtown at build-out by 2022 is estimated to require 2,410 additional commercial spaces based on *maintaining the existing level of alternative mode rates by downtown employees reducing parking demand*. There are currently 3,659 public parking spaces in the downtown; the total number of spaces is 6,675 including private supply. During 2015, CAGID will be updating the access and development projections for downtown to incorporate updated TMP projections, the 2014 employee travel survey results, downtown development and additional private parking, current parking utilization rates as well as employee per square foot data.

Accommodating this future access demand requires a variety of options, investments and strategies. CAGID owns one remaining surface parking at Broadway and Spruce with 60 spaces. It is estimated that, given the site constraints and required wrap of uses, a net increase of approximately 150 spaces is possible. Given the land constraints and high cost of building parking, CAGID will need to continue and expand its multi-faceted approach: increasing all modes of travel (transit, biking, shared driving), and innovative strategies to create more parking including public and private partnerships to maintain the access to downtown that is necessary to get downtown economically and socially vibrant.

A first step to meeting the future demand is the easiest and the least expensive: increase utilization of the existing CAGID garages. As of FTH's 2013/14 analysis, the average utilization is approximately 74%. Increasing the CAGID garage utilization rate by 5% is projected to lessen the demand for new spaces by 120; lessening the ultimate demand for new parking spaces to 2,290 or translating to a savings of \$4.2 million based on a planning number of \$35,000 per space.

Another option is to reduce the number of downtown employees that drive to downtown and need parking by increasing employee use of other modes than driving – transit, bike, car/van pool etc. If the downtown employee alternative mode share could increase from 64% to 67%, it is projected to reduce future parking space demand by 942 spaces by build out (assuming the mode share increase for both existing and new employees). The specifics of how this could be achieved would need thorough analysis and a very specific implementation and funding strategy. Though if achieved, the increased alternative mode share of employees would reduce the parking space demand to 1,348.

Once the options for reducing parking demand are considered (a total of 1,062 parking space equivalents), the next step is how and where to accommodate some percentage of additional parking. As stated earlier, the option to build parking on existing CAGID property is at Broadway and Spruce and would result in a net gain of approximately 150 spaces; reducing the number of spaces needed to 1,198. The addition of private parking spaces is estimated to be at a total of 500: 300 from the Pearl West Building, 100 net

new spaces at the Wells Fargo Lot and potentially another 100 spaces from smaller redevelopments. Staff has recently reviewed the surface parking lots in the downtown and has found relatively few options for redevelopment with the exception of the Wells Fargo lot and several churches on the periphery of downtown. This leaves a remainder of 698 spaces. To recap:

Total Access Demand based on existing alt mode rates:	2,410
Reduce demand by higher CAGID utilization (5%)	- 120
Reduce demand by higher employee mode share (67%)	- 942
Additional CAGID spaces	- 150
Additional private spaces	- 500
Balance of spaces needed:	698

For comparison, 1500 Pearl garage has 686 spaces.

Other factors that could play an important role in addressing this access demand include: working with private parking providers to increase their parking utilization by 5%, estimated at potentially 120 spaces based on a similar increase in the CAGID parking system. Another factor in the future of downtown access and parking will be the development of the Civic Area. The vision plan includes additional new park spaces as well as the “book end” developments at the east and west ends that includes structured and underground parking to replace existing parking lots and accommodate new uses. Additional analysis and study is needed to determine what role CAGID could play as a partner for the provision of additional parking in the civic area that could serve both the downtown and the new civic uses.

Financial Impacts to the CAGID Fund

As mentioned above, the cost of the parking spaces at Trinity Commons was proposed to be funded from the CAGID fund balance. The original cost of \$1.7 million was included in the approved budget for 2015. Consultation with CAGID’s financial advisor indicated that the allocation from fund balance would not have a detrimental impact on CAGID’s finances. The projected fund balance at the beginning of 2016 is \$3,448,058, this is after \$1.1 million held in reserves. In the current CAGID fund financial, see Attachment D, the fund balance increases at a rate of approximately \$1million per year. In 2018, the annual bond payment (\$1million) for the 1500 Pearl garage is paid off. The 1000 Walnut bond payment of approximately \$800,000 is paid off in 2023. The projected fund balance in 2019 is \$6.7 million. (See **Attachment E**)

As indicated in the MOU, it is anticipated that the 55 parking spaces at Trinity Commons would initially be used as long term permit parking. The annual revenue from long term employee permits is estimated to be \$91,476 (increasing 5% every two years) based on an oversell rate of 120% or 66 spaces. The net income per year is estimated to be \$65, 189 in 2016. In future years, depending on demand and discussions with Trinity Lutheran, the spaces could also be used as short term parking which would double the

revenue. In 16 years, the estimated revenue from long term permits is approximately \$1.1 million.

It is clear that the 55 spaces at Trinity Commons, as a stand alone facility, would not pay for itself for some time. And due the smallness of the project, the project costs are higher than a larger facility where the scale of the project can spread certain costs over a larger area and number of spaces. However, the last two bond issues (1500 Pearl and 1000 Walnut) have both carried debt for 20 years and receive the benefit from the support of the CAGID fund. In the case of 1000 Walnut, tax increment financing was used to make up the difference between the revenues from the garage and its expenses.

Strategies and Options for Addressing Future Downtown Access Demand

As indicated by the above access projections, even with a very aggressive alternative mode shift, CAGID will require innovative and multi-pronged strategies to meet the access needs of downtown over time. Taking a collaborative and opportunistic approach could result in co-benefits by sharing resources and maximizing opportunities between private and public developments. CAGID's financing prowess can leverage partnerships and at the same time ensure that the SUMP principles of parking management (shared, unbundled, managed and paid) are applied and multi-modal options are included in meeting downtown access demands.

Staff will be pursuing the following strategies for meeting this future demand; all are part of the Access Management and Parking Strategy (AMPS) project. These include additional TDM programs and transit; public/private and public/public partnerships for shared parking; edge parking; parking management strategies including pricing; and regulations. For further description of these strategies please see **Attachment F**.

Next steps regarding broader strategies include:

- Develop a specific plan to understand how additional access demand can be accommodated through multi-modal solutions
- Commission a consultant to conduct an analysis of edge parking options and issues
- Investigate a high frequency trolley between downtown and Boulder Junction.
- Punch card review: Cost sensitivity analysis of punch cards and placing limits on the number of punch cards purchased by any business
- Examine parking pricing, mobile phone payment limitations and the overtime at meter fees to ensure parking is managed as efficiently and effectively as possible
- Create an employer stakeholder group to get feedback on ideas and options for employee access.
- Participate in the analysis of future access and parking options within the Civic Area Planning process and options for CAGID partnerships
- Update current downtown access demand projections based on 2015 employee survey data and review of employee per square foot rates
- Work with CP&S and Housing regarding an RFP for the Broadway and Spruce parking lot for a mixed use development of micro units and additional parking
- Outreach to Wells Fargo regarding their future development plans

STAFF RECOMMENDATION

CAGID faces future challenges in fulfilling its mission to provide access to the downtown. The dual strategies of the past have served downtown well: reducing parking demand of employees through the downtown employee Eco Pass program with related car and bike share options and providing shared, unbundled, managed and paid parking facilities on land purchased decades ago. 2015 brings unique challenges that will require innovative solutions; a more multi-faceted approach; and “outside of the box” thinking. These include gaining access to expanded, regional multi-modal solutions, particularly transit, that address the changing and growing regional demographics of the downtown employees; and finding ways to partner with others to provide parking for employees and visitors. The opportunities to build a stand-alone 600-700 space parking garage with its innate operational and cost efficiencies are becoming rarer. The solutions will need to be opportunistic, come in smaller chunks and be more dispersed; and they will require collaborative and shared solutions with both public and private partners.

Staff recommends proceeding with the Trinity Lutheran public private partnership negotiations within the wider context of pursuing strategies to provide multi-modal solutions for downtown access. It is a timely opportunity for CAGID to provide additional parking on one of the few remaining surface lots in the downtown area. Staff would propose the following next steps:

- Consult with CAGID’s financial advisor regarding the impact to the CAGID fund of the increase cost of the Trinity Commons project.
- Work with Trinity Lutheran on the next steps outlined in the MOU including:
 - Detailed review of construction documents and cost estimates
 - Develop an outline of a construction agreement including CAGID participation in construction review, payment schedule.
- Pursue next steps as outlined in the AMPS work plan.

ATTACHMENTS

- A. Draft MOU with Trinity Lutheran
- B. Construction Cost Analysis by BuildMark
- C. Letter from Trinity Lutheran Church
- D. Excerpt from a Report by Fox Tuttle Hernandez
- E. CAGID Fund Financial
- F. AMPS District Management Strategies

MEMORANDUM OF UNDERSTANDING

between

CAGID OF BOULDER

and

TRINITY EVANGELICAL LUTHERAN CHURCH OF BOULDER, COLORADO

Dated as of _____, 2015

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") is entered into as of _____, 2015 by and between the **CENTRAL AREA GENERAL IMPROVEMENT DISTRICT**, a general improvement district formed pursuant to Chapter 8-4, Boulder Revised Code and the laws of the State of Colorado ("**CAGID**"), and **TRINITY EVANGELICAL LUTHERAN CHURCH OF BOULDER, COLORADO** ("**Trinity**"), (CAGID and Trinity being collectively referred to herein as the "**Parties**" and individually as a "**Party**") with reference to the following facts:

RECITALS:

A. Trinity is the owner in fee simple of those certain parcels of real property located in the City of Boulder, County of Boulder, State of Colorado, and improvements located thereon, as described more particularly on **Exhibit A** attached hereto and by this reference incorporated herein, and commonly known as 2200 Broadway, Boulder, Colorado (the "**Property**").

B. While the Property is not located within CAGID's boundaries, CAGID has full authority to construct, own and maintain parking facilities outside of such boundaries.

C. Trinity desires to plan, design, develop, construct, and operate various church-related structures, residences, parking and other improvements on the Property, in whole or in part as a phased condominium regime, including reserved air rights for future condominium expansion (collectively, the "**Project**"), which regime shall be subject to owner association declarations and a condominium map (together the "**Declarations**").

D. The Project shall contain at least one parking structure (the "**Parking Structure**") which shall contain a condominium unit consisting of approximately 26 parking spaces, plus two surface parking spots, under the control of Trinity or its assigns (the "**Trinity Parking Condominium**") and a condominium unit beneath the Trinity Parking Condominium consisting of approximately 55 parking spaces under the control of CAGID (the "**CAGID Parking Condominium**"). The Trinity Parking Condominium and the CAGID Parking Condominium are referred to jointly herein as the "**Parking Condominiums**" and are depicted on **Exhibit B**, attached hereto and incorporated herein.

E. In consideration of (i) Trinity contributing the land necessary for the construction of the Parking Structure, (with rights to construct further residential units above or adjacent to the same), and (ii) CAGID's agreement to pay periodic construction draws for the costs of construction of the Parking Structure allocated to CAGID, it is the intent of the Parties that:

1. CAGID be the owner of the CAGID Parking Condominium, together with certain rights to limited or general common elements appurtenant thereto, and
2. CAGID assume ongoing maintenance obligations with respect to the CAGID Parking Condominium, including the limited common elements associated with the CAGID Parking Condominium.

F. The Parties intend that, as additional consideration, Trinity shall be able to use parking at specified limited times in the CAGID Parking Condominium.

G. The Parties intend that the Parking Structure will be constructed, maintained and operated in a good and workmanlike manner, consistent with other parking structures owned or managed by CAGID.

H. Execution of a binding Development and Ownership Agreement (as defined below in Paragraph 4.a.) between the Parties is conditioned upon (1) CAGID and Trinity completing their respective due diligence on the economic and operational feasibility of the Project, the issuance of bonds for the benefit of CAGID or appropriation of the necessary financing for CAGID, and the approval of financing for Trinity, all in such Parties' respective sole discretion. This MOU is not intended to be a binding obligation to approve any matter or grant any entitlement for which notice and hearing or other legislative action is required. All terms contained herein shall become effective only after all required hearings and approval by the Boulder City Council acting as the Board of Directors of CAGID authorizing the city manager to negotiate and, if found economically and financially feasible by the city manager, execute the Definitive Agreements (as defined below) (the "**CAGID Approval**"), and approval by the Trinity Lutheran Church membership (the "**Trinity Approval**"). Further, while Trinity has obtained certain approvals from the City of Boulder (the "**City**") for the Project, the obligations of the Parties hereunder shall be subject to final approval by the City of Plans and Specifications and the issuance of building permits and third party lender financing for the Project in favor of Trinity.

I. This MOU is intended to provide a frame work for the Parties to negotiate in good faith those definitive agreements for the construction, development and operation of the Parking Structure, and the creation of the ownership interests and associated rights expressly and impliedly contemplated herein. This MOU is not intended to constitute the definitive and ultimate binding agreement between the Parties as to such construction, development and operation or other subject matter set out in this MOU.

NOW, THEREFORE, based on the foregoing recitals, the Parties are entering into this MOU.

UNDERSTANDING

1. **Purpose.** The purpose of this MOU is to provide an outline of the general terms of the understanding of the Parties with respect to the Project and the Parking Structure in order for the governing boards of both Parties to approve the general structure of the transaction and authorize the Parties and their legal counsel to complete the definitive and binding documentation for the same.

2. **Trinity Obligation to Construct and Convey.** Upon execution of the Definitive Agreements as defined below, and upon satisfaction of all of the conditions precedent to Trinity's obligations as set forth therein, Trinity will (a) convey the Property to CAGID as tenants in common with Trinity for the time of construction of the Project and until construction of the CAGID Parking Condominium is completed and accepted by CAGID and the CAGID Parking Condominium is conveyed to CAGID, or enter into such other agreements with CAGID

that CAGID funds will adequately secure CAGID's rights in and to the CAGID Parking Condominium as CAGID funds construction thereof; (b) construct the Parking Structure in accordance with the Plans and Specifications in the time agreed upon by the Parties, and (c) convey the completed CAGID Parking Condominium to CAGID.

3. **CAGID Obligation to Acquire CAGID Parking Condominium Unit.** In consideration of the foregoing, upon execution of the Definitive Agreements and satisfaction of the conditions precedent to CAGID's obligations as set forth therein, CAGID will take delivery of a deed to the CAGID Parking Condominium and during the term of CAGID's ownership thereof, will operate and maintain the CAGID Parking Condominium in accordance with the terms of the Definitive Agreements.

4. **Anticipated Definitive Agreements.** The Definitive Agreements shall include, without limitation, the following documents, and such other documents as may be determined jointly by the Parties or their respective counsel to be required to fulfill the Parties' intent (the "**Definitive Agreements**"):

- a. Development and Ownership Agreement – such agreement to contain the terms of the Parties' agreement for the respective development, construction, design, and payment obligations of the Parties through completion of the Parking Structure;
- b. Construction Agreement – such agreement to contain the terms of construction of the Parking Structure between Trinity and the chosen general contractor for the Parking Structure;
- c. Parking Structure Operation Agreement – such agreement to contain the terms by which CAGID shall operate the Parking Structure, including periods during which Trinity may use parking within the CAGID Parking Condominium, charges for parking obligation violations (e.g., parking by Trinity during paid parking times established hereunder by CAGID, failure of CAGID to make available parking to Trinity as required hereunder).
- d. Trinity Commons Owners Association ("TCOA") Declarations – the Declarations to contain the respective ownership rights, common area maintenance obligations, respective Parking Structure maintenance obligations, pro-rata obligations for ongoing expenses and capital expenditures, and such other allocated rights and responsibilities as may be typically included in similar Declarations.
- e. TCOA Condominium Map – such map to be prepared in accordance with applicable law and industry standards reflecting as built general and limited common elements, unit boundaries, and expansion rights in air space for additional condominium units.
- f. TCOA Bylaws, Articles of Incorporation, Rules and Regulations.

5. **Conditions Precedent to Definitive Agreements.** Before commencement of preparation of the Definitive Agreements, as defined below, the following conditions shall have been

fulfilled, both Parties agreeing to pursue fulfillment of such conditions in good faith and as soon as reasonably practicable:

- a. CAGID Approval (it is anticipated that CAGID shall submit the MOU to the Boulder City Council for consideration of authorization of the city manager to negotiate and execute the Definitive Agreements on or before _____. 2015);
- b. Trinity Approval (it is anticipated that Trinity shall submit the MOU for approval by the Trinity membership on or before _____, and for approval by _____, on or before _____, 2015);
- c. Confirmation of requisite financing commitments for Trinity's development of the Project, including without limitation:
 - i. Reimbursement of pre-development soft costs for planning, design, legal and similar preconstruction work and consulting;
 - ii. Agreed allocation of expenses between CAGID and Trinity for predevelopment soft costs and hard costs of construction and other related project costs;
 - iii. Closing on _____ loan by Trinity;
 - iv. Allocation to Trinity of _____ grants for the Project;
- d. Appropriation of funds by CAGID for its agreed upon share of the costs of the Parking Structure;
- e. Modification of lot boundaries and legal descriptions for underlying Property as necessary to achieve qualifying financing for affordable condominium units and other applicable land use and other restrictions.

6. **Trinity Development Rights.** Trinity shall retain development rights as Declarant of the TCOA to construct additional commercial and/or residential and/or parking facilities, and annex the same into the TCOA in accordance with, and for not less than the time period allowed for completion of all phases of the development approval for and related to City of Boulder LUR2013-00048 and consistent with the requirements of City of Boulder Ordinance No. 7978, dated June 3, 2014. Such rights shall include the right to annex air rights and construct additional residential units as part of the Project. Nothing herein shall be deemed to limit the ability of Trinity to obtain through applicable governmental processes, additional development rights with respect to the Project and which do not materially interfere with the intent of the Parties hereunder and, in particular, the rights of CAGID with respect to the CAGID Parking Condominium.

7. **CAGID Operation Rights and Obligations.** CAGID's operating rights and obligations shall include the following with respect to the CAGID Parking Condominium:

ATTACHMENT A: Draft MOU with Trinity Lutheran

- a. Issuance of permits for the parking spaces therein, subject to use by Trinity as set forth below;
- b. Operation of, and responsibility for, all systems for payment for parking in the CAGID Parking Condominium, including upgrades to the same;
- c. Maintenance of those limited common elements and general common elements associated with, or necessary for the operation of the paid parking within the CAGID Parking Condominium; the Parties agree that the maintenance obligation for these limited common elements and general common elements will be equitably shared with the owners of all other units these general and limited common elements are associated with;
- d. Maintenance of the CAGID Parking Condominium in accordance with the Boulder Revised Code and CAGID parking garage maintenance and operation standards;
- e. Payment of all ongoing expenses associated with the operation of the CAGID Parking Condominium, including without limitation, utilities, insurance, licenses, ADA compliance, taxes, if any, and upgrades;
- f. Selection and placement of directional and enforcement signage; the selection and placement of any signage that is to be located outside of the CAGID Parking Condominium shall be subject to Trinity's and the TCOA's reasonable consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- g. Trinity shall have the right but not the obligation to obtain, at standard CAGID rates and under standard CAGID conditions, quarterly permits for up to five parking spaces in the CAGID Parking Condominium, on a right of first refusal basis, upon Trinity giving CAGID not less than 60 days notice. Otherwise, issuance of all parking permits lies within CAGID's sole discretion.
- h. CAGID shall have the right to review and approve any bids and contracts, drawings, plans, associated with and to inspect the construction of the Parking Structure. CAGID will not be required to make payments related the planning, design, construction, or other consulting work for which payment is required under the Definitive Agreements unless CAGID approved such work. CAGID agrees to review bids, contracts, drawings and plans within 60 days of their delivery to CAGID for purposes of review. CAGID's approval shall not be unreasonably withheld.
- i. Prior to construction of any development on the Property pursuant to Paragraph 6 of this Agreement, such development shall be reviewed and approved by CAGID. CAGID agrees to review drawings and plans of such development within 60 days of their delivery to CAGID for purposes of review. CAGID may refuse to provide its approval if CAGID determines that the proposed development may have negative impacts on the CAGID Parking Condominium structure.

8. Use of Parking in the CAGID Parking Condominium. CAGID will operate the CAGID Parking Condominium as follows:

- a. For the first five years following the commencement of parking operations in the CAGID Parking Condominium, CAGID will issue quarterly parking permits for parking in the CAGID Parking Condominium. After 5:00 p.m. on weeknights and all day on Saturdays, parking in the CAGID Parking Condominium will be available to the public. During these first five years, parking in the CAGID Parking Condominium shall be free for Trinity after 5:00 p.m. until 11:59 p.m. of the same day on weeknights and all day Saturday. CAGID may choose to not charge other users of the garage after 5:00 p.m. on weeknights and all day on Saturdays. Following the first five years, CAGID may, in its sole discretion, change its operation of the CAGID Parking Condominium except that Trinity shall retain the exclusive use of the CAGID Parking Condominium on Sundays, Christmas, and Christmas Eve as described in b. below. In addition, after the first five years, Trinity will have access to parking without charge based on availability within the CAGID Parking Condominium for church related uses from 5:00 p.m. until 11:00 p.m., Monday through Thursday, of up to eighty (80) passes per week, with daily use not to exceed thirty-five (35) passes. For purposes of this MOU, each entry of a vehicle into the CAGID Parking Condominium shall count as one (1) pass.
- b. Sundays, Christmas and Christmas Eve: As long as Trinity holds the fee simple interest to the Property and is a church, Trinity shall have exclusive use, at no cost to Trinity, of the CAGID Parking Condominium parking from 6:00 a.m. to 10:00 p.m. on all Sundays of the year and on Christmas Day, and after 3:00 p.m. on Christmas Eve.

9. Construction Funding Obligations of CAGID:

- a. Trinity shall contract with the general contractor for the construction of the Parking Structure (including the CAGID Parking Condominium), in conjunction with other facilities and infrastructure for Trinity's use and for affordable housing construction on the Property. CAGID shall have the right to review and participate in the approval of the contract with the general contractor. The parties agree that CAGID can consider any factors and requirements set forth in Chapter 2-8, "Purchasing Procedures," B.R.C. 1981 in the approval of the contract. CAGID's approval shall not be unreasonably withheld. All bills/construction draws for the Parking Structure shall be submitted to CAGID once per month, and CAGID shall process such bills as construction draws and pay the general contractor directly therefore within sixty (60) days of delivery of such invoicing (or as otherwise required under the construction contract). The process for such payments shall be set out in the Definitive Agreements and shall include a procedure that will ensure compliance with the notice of final settlement requirements of Section 38-26-107, C.R.S. The terms of Trinity's construction

contract with the general contractor addressing, including, but not limited to, insurance and bonding requirements, guarantees and warranties, building defects and contract breaches affecting the Parking Structure shall also be set out in the Definitive Agreements.

- b. It is the intent hereof that all hard and soft costs for the design, site investigation, engineering reports, and architecture, as well as all hard costs for the construction of the Parking Structure allocated to CAGID, shall be paid by CAGID in consideration of its receipt of title to the CAGID Parking Condominium (such costs to be approved by CAGID, which approval shall not be unreasonably withheld, conditioned or delayed).
- c. Construction shall be conducted pursuant to a maximum fixed price bid agreement with the general contractor. The costs attributable to the Parking Structure shall be separated by the general contractor from the other Project costs into a distinct Schedule of Values for that portion of the work. Costs of third party verification of costs and construction by CAGID shall be at CAGID's expense. CAGID's share of the Parking Structure costs shall generally include:
 - i. an equitable allocation of other overall Project costs directly or indirectly benefitting the CAGID Parking Condominium (exclusive of the costs of the Property, which is being contributed by Trinity to the TCOA at no additional allocated cost to CAGID);
 - ii. costs of construction of the Parking Structure, exclusive of the costs for construction solely benefitting Trinity. Costs exclusively benefitting Trinity include costs incurred for structural support upgrades to support potential buildings in the airspace above the structure;
 - iii. CAGID's pro rata share of common elements of the Parking Structure or otherwise benefitting or supporting uses of the Parking Structure; Trinity shall be responsible for its pro rata share of common elements of the Parking Structure or otherwise benefitting or supporting the uses of the Parking Structure
 - iv. pro rata share of the waterproofing of all subgrade foundation elements of the Parking Structure and waterproof deck coating of the CAGID Parking Condominium and the Trinity Parking Condominium.
- d. Trinity shall be responsible for the completion of the Project and for payment of all costs that are associated with the Parking Structure and the remainder of the Project that CAGID is not specifically responsible for.
- e. Specific allocations of construction costs between the Parties shall be included in the Definitive Agreements. To the fullest extent legally permissible, as determined by each Party in its sole discretion for the records the Party holds, and in order to protect bidders' proprietary information, the Parties shall maintain

bidding information, if any, confidential from third parties, other bidders or the public prior to awarding the construction contract.

10. Future Modifications to Parking Rights: The Parties agree, following the fifth (5th) anniversary of the date of commencement of parking operations at the Parking Structure, if requested at that time by either Party, to engage in good faith negotiations to modify the Parties' respective parking rights. While the Parties agree to negotiate in good faith at that time upon request by either party, the Parties further agree that CAGID may, in its sole discretion, change its operation of the CAGID Parking Condominium following the fifth (5th) anniversary of the date of commencement of the parking operations at the Parking Structure except that Trinity shall retain the exclusive use of the CAGID Parking Condominium on Sundays, Christmas, and Christmas Eve as described in 8.b. above and that after the first five years of operation, Trinity will have access to parking without charge based on availability within the CAGID Parking Condominium for church related uses from 5:00 p.m. until 11:00 p.m., Monday through Thursday, of up to eighty (80) passes per week, with daily use not to exceed thirty-five (35) passes as described in 8.a. above.

11. Use of Congregation Space: To the extent consistent with the Boulder Revised Code or City of Boulder Ordinance No. 7978, in addition to the religious assembly use, Trinity may use congregation and community meeting space for uses that are accessory to the religious assembly use and to support non-profit organizations or other community uses.

12. Declarations of TCOA: The Declarations shall contain standard and transaction-specific common interest community provisions consistent with the intent of the Parties as expressed herein and in other Definitive Agreements, including without limitation:

- a. Reserved Declarant Rights with respect to voting and board appointments, and Reserved Development Rights to construct and annex additional units;
- b. Agreement as to equitable allocation of TCOA Dues;
- c. Specific provisions as to operation, maintenance and access to the Parking Structure and parking spaces in the CAGID Parking Condominium;
- d. Special association expense allocations between the CAGID Parking Condominium, the congregation's spaces and the residential units;
- e. Restrictions on uses acceptable to CAGID and Trinity;
- f. Equitable allocation of voting rights between different uses within the TCOA;
- g. Allocation of insurance costs and agreed insurance requirements for different uses (TCOA to maintain property, liability and other agreed insurance on the TCOA property, board and managers, and such other insurance as TCOA may determine, and owners to maintain liability insurance on respective condominium units (CAGID to be able to self-insure as long as CAGID maintains an active self-insurance program);

- h. Construction defect provisions;
- i. Arbitration provisions;
- j. Assessments and remedies;
- k. Obsolescence and termination of Association;
- l. Reserved CAGID rights with respect to parking;
- m. Expansion rights for Trinity;
- n. Provisions for right of first refusal and right of first offer in Trinity in the event of a sale of the CAGID Parking Condominium;
- o. Provisions for self-help in the event of non-performance of obligations or abandonment of property.

13. **Monthly Status Reports.** On or before the tenth (10th) day of each month, starting with the first full month after the Effective Date, Trinity shall provide to CAGID monthly status reports regarding progress on the schedule of performance for the Project. Reports hereunder may be provided by email or other common communication method agreed upon by both Parties.

14. **Regular Meetings.** CAGID and Trinity shall meet regularly with each other in order to determine the feasibility of the Project and identify the approvals and documents necessary to develop and operate the Project.

15. **Schedule of Documentation:** The Parties shall endeavor in good faith and without unreasonable delay or condition to meet the following deadlines:

- a. Trinity Approval: (Holland & Hart and Trinity)
- b. CAGID Approval: (City)
- c. Cost Schedules: (Architect)
- d. Plan Approval for Parking Structure: (Architect)
- e. Preliminary Loan Approval/Final or Other Loan Approval (Holland & Hart)
- f. Declarations, Articles and Bylaws for TCOA: (Holland & Hart)
- g. Condominium Map (upon completion of construction): (Holland & Hart, Architect and Surveyor)
- h. Development and Ownership Agreement (City Attorney's Office and Holland & Hart)
- i. Construction Agreement (Architect and Holland & Hart)

16. Termination. Unless modified by written agreement of the Parties, this MOU shall automatically terminate upon execution of the Development and Ownership Agreement, or if not so executed, then on [_____, 201__].

17. Notices.

a. Any formal notice, request, approval or other communication to be provided by either Party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile or email transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of CAGID and Trinity set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either Party may from time to time designate.

b. Any notice that is transmitted by electronic facsimile or email transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

c. If to CAGID:

CAGID
c/o the Boulder City Manager
Boulder Municipal Building
P.O. Box 791
Boulder, CO 80306

With a required copies to:
the Boulder City Attorney
Attn: Hella Pannewig
1777 Broadway
P.O. Box 791
Boulder, CO 80306 Telephone: 303-441-3020

d. If to Trinity:

With a Copy to:

Christopher A. Gunlikson, Esq.
Holland & Hart, LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Phone 303-473-2700

18. **Counterpart Originals.** This MOU may be executed in two (2) counterpart originals which, when taken together, shall constitute but one and the same instrument.

19. **Amendment.** This MOU may not be amended unless agreed as such in writing and certified by the signatures of the Parties hereunder.

20. **Governing Law.** This MOU shall be interpreted and enforced in accordance with the provisions of Colorado laws in effect at the time it is executed, without regard to conflict of law provisions.

21. **Effective Date.** This MOU shall be submitted to the Boulder City Council when executed by Trinity. The "Effective Date" shall be the date this MOU is approved by the Boulder City Council and executed on behalf of CAGID.

22. **Non-Binding.** Notwithstanding anything to the contrary set forth herein, the Parties acknowledge that this MOU is not intended to be binding in any respect. There shall be no binding contract on any other provision of this MOU unless and until the Definitive Documents are executed and delivered by both Parties and approved by all applicable governmental action, including approval thereof by the Boulder City Council. This MOU is only an expression of interest and may not become part of any eventual contracts. The MOU is not intended to impose any obligation to bargain other than in good faith but at arms' length.

23. Financial Obligations of CAGID. Any and all financial obligations of CAGID under this MOU are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this MOU shall be deemed a pledge of CAGID's credit, or a payment guarantee by CAGID to Trinity.

24. Independent Contractor. The relationship between Trinity and CAGID is that of an independent contractor. Trinity shall not be deemed to be, nor shall it represent itself as, employee, partner, or joint venture with CAGID. No employee or officer of CAGID shall supervise Trinity.

25. No Third Party Beneficiaries. The Parties intend no third party beneficiaries under this MOU. Any person other than CAGID or Trinity receiving services or benefits under this MOU is an incidental beneficiary.

(Signatures on next page)

CENTRAL AREA GENERAL IMPROVEMENT DISTRICT,
a General Improvement District Formed Pursuant To
Chapter 8-4, Boulder Revised Code 1981

By: _____

City Manager of the City of Boulder
as ex officio general manager

Attest:

City Clerk
APPROVED AS TO FORM:

City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(See attached.)

Exhibit A: Legal Description

All of Lots 4,5,and 6, and a strip of land 10 feet wide off the south side of Hill Street in the City of Boulder and contiguous to the north line of lots 4, 5, and 6, all of lot 7, and the west 45 feet of lot 8, all in block 149, Boulder Plat. City of Boulder, State of Colorado.

Address: «CSM_ADDRESS»

EXHIBIT B

Trinity Parking Condominium and

CAGID Parking Condominium

(See Attached)

(Placeholder for EXHIBIT B

which is to be added prior to final execution of MOU)

BuildMark

Trinity Lutheran Church Project
 BuildMark Feedback on Parking Garage
 October 10, 2014

Overview

As a follow up to BuildMark's February 2014 review and report for the Trinity Lutheran Church Project Schematic Design (SD) pricing dated July 24, 2013, BuildMark has reviewed the Design Development (DD) pricing and is providing the following narrative. To further understand the DD pricing & allocations, BuildMark met with Chris Jacobs of Element Properties on September 30, 2014. Erik Hartronft, the project architect, joined the conversation by phone. The overall cost increases from SD to DD are summarized below, divided between Hard & Soft Costs.

Project Hard Costs

Schematic Design Hard Cost Pricing **\$5,942,175**

Assumed Schematic Design Allocations

Residential	40%	\$2,376,870
Fellowship Hall	25%	\$1,485,544
Parking Structure	35%	\$2,079,761
TOTAL	100%	\$5,942,175

Design Development Hard Cost Pricing **\$7,148,322**

Assumed Design Development Allocations

Residential	38%	\$2,715,806
Fellowship Hall	19%	\$1,388,345
Parking Structure	43%	\$3,044,171
TOTAL	100%	\$7,148,322

Per the Fischer Construction DD estimate dated August 19, 2014, hard costs have increased approximately \$1.2M (20%) from the SD to the DD estimate. Some of the largest cost increases occurred in the following categories: Masonry, Carpentry, Roofing, HVAC & Electrical.

As shown above, the hard cost allocation between the 3 property types has changed dramatically between SD and DD with the Parking Structure absorbing approximately \$965K (80%) of the hard cost increase. The SD allocations above seemed reasonable at the SD level, the DD allocations were derived by Fischer Construction going line by line through the DD estimate and allocating costs across the 3 property types. The Parking Structure allocation increased dramatically with the assumption that the majority of Earthwork, Shoring, Concrete, Steel and Waterproofing costs are allocated to the Parking Structure.

ATTACHMENT B: Construction Cost Analysis by BuildMark

CAGID Hard Costs

In our meeting with Chris, we reviewed the allocation assumptions used to arrive at the \$2.4M (79% of the \$3.0M Parking Structure DD allocation) CAGID Hard Cost allocation. The detailed spreadsheet is attached to this letter. As shown on the spreadsheet, a majority of the CAGID Hard Cost allocations are assumed to be 67.9% (55 CAGID spaces divided by the 81 total spaces). Some of the larger cost categories (Concrete Reinforcement, Cast-in-Place Concrete, Structural Steel, Waterproofing) have allocation %'s above the 67.9% because the vast majority of these costs are allocated to CAGID spaces on the lower parking level located below grade. Chris feels these higher CAGID allocations are warranted as these costs are attributed to the 55 CAGID spaces and the majority of these costs wouldn't exist if an underground parking garage wasn't built as part of the Trinity project.

Project Soft Costs

Schematic Design Soft Cost Pricing **\$1,741,464**

Assumed Schematic Design Allocations

Residential	45%	\$779,489
Fellowship Hall	36%	\$630,491
Parking Structure	19%	\$331,484
TOTAL	100%	\$1,741,464

Design Development Soft Cost Pricing **\$1,798,718**

Assumed Design Development Allocations

Residential	49%	\$876,087
Fellowship Hall	33%	\$588,468
Parking Structure	19%	\$334,164
TOTAL	100%	\$1,798,719

As you can see above, the Project Soft Costs haven't changed much from SD to DD pricing. Chris and I reviewed the soft costs in our meeting and the allocation changes agreed to are included on the attached spreadsheet. In many instances when underwriting a real estate development, soft costs are assumed to be a % of hard costs. To arrive at the 28.92% CAGID soft cost allocation, the 43% of Parking Structure Hard Cost allocation was multiplied by 67.9%.

BuildMark Summary

1. The Total Hard Cost of \$2.521M (including a 5% contingency) or \$45,848/space is a significantly higher cost than BuildMark has observed on recent projects and in recent discussions with general contractors. Recent projects and general contractor pricing feedback have been in the \$30K - \$38K per space range. The hard cost is considerably higher due to the majority of the following hard costs allocated to the 55 CAGID parking spaces: Earthwork, Shoring, Concrete, Steel and Waterproofing.

ATTACHMENT B: Construction Cost Analysis by BuildMark

2. The approximate 20% increase in the Fischer Construction Hard Cost estimates from SD (July 2013) to DD (August 2014) feels high. Construction costs have definitely increased over the past year, but BuildMark would expect this increase to be more around 10-15%.
3. In discussions with Chris, BuildMark understands that the Fischer Construction DD pricing doesn't include any allowance for parking equipment. BuildMark isn't sure the CAGID parking equipment required, but parking equipment could add \$30-40K in additional CAGID costs.
4. The Soft Costs of \$334,164 (19% of the \$1,798,719 in Soft Costs) attributed to the Parking Structure seems reasonable and fair to assume, the 19% allocation hasn't changed since the SD pricing. BuildMark feels Chris has been reasonable in the soft cost allocation categories to the Parking Structure. As you can see in the attached spreadsheet, Chris didn't allocate soft costs such as Legal, Accounting, Loan Fees and Marketing to the Parking Structure.
5. As we all know, allocating hard & soft costs between different product types within a real estate development isn't an exact science and is very difficult for all parties to feel they have been treated equally. BuildMark believes Chris has used reasonable rationale to allocate hard & soft costs between CAGID and the Trinity Church.
6. In conversations with Chris, BuildMark understands the next step, if CAGID decides to move forward, is for all parties to agree to a Memo of Understanding (MOU) on the deal terms for the Trinity Project. Chris would like the MOU to include a total CAGID cost range where CAGID would be comfortable moving forward to construction documents. The overall pricing & allocation will change once construction documents are complete and Fischer Construction prices the drawings. Chris stated that Trinity has spent approximately \$250K on design & engineering to date and would like an MOU in place before recommending that the Trinity Church continues to spend money.

Let us know if you have further questions or want to discuss any of the items above. Thanks for thinking of BuildMark to assist CAGID in the Trinity Project due diligence effort.

ATTACHMENT B: Construction Cost Analysis by BuildMark

Trinity Lutheran Church CAGID Parking Lot Cost Allocation			Updated September 2014		
CAGID Lot Soft Costs			Project Soft Costs (Housing, Fellowship, and Parking Combined)		
	Amount	% of Total			
Permit & City Fees	77,554	12.74%	Permit & City Fees	608,885	
Legal	-	0.00%	Legal	45,750	
Accounting	-	0.00%	Accounting	15,000	
Loan Fees & Construction Interest Reserve	-	0.00%	Loan Fees & Construction Interest Reserve	174,815	
Due Diligence	-	0.00%	Due Diligence	-	
Project Management	103,096	28.92%	Element - Project Management	356,531	
Marketing / Branding	-	0.00%	Marketing / Branding	15,000	
Architecture	107,809	28.92%	Architecture	372,832	
Structural Engineering	17,061	28.92%	Structural Engineering	59,000	
Mechanical & Electrical Engineering	4,100	10.00%	Mechanical & Electrical Engineering	41,000	
Energy Consultant	-	0.00%	Energy Consultant	8,225	
Civil Engineering	11,856	28.92%	Civil Engineering	41,000	
Fischer Pre Construction	-	0.00%	Fischer Pre Construction	7,800	
Landscape Architecture	1,908	28.92%	Landscape Architecture	6,600	
Geotech	434	28.92%	Geotech	1,500	
Acoustic Consultant	-	0.00%	Acoustic Consultant	5,000	
Kitchen Consultant	-	0.00%	Kitchen Consultant	4,000	
Survey	1,093	28.92%	Survey	3,780	
Reimbursable Expenses - All Consultants	2,024	28.92%	Reimbursable Expenses - All Consultants	7,000	
Soft Cost Contingency	7,229	28.92%	Soft Cost Contingency	25,000	
Total Soft Costs	334,163	19%	Soft Costs Total	1,798,718	
Change from Original Proposal (38,572)					
CAGID Lot Hard Costs			Total Garage Hard Costs - 81 Spaces		
	Amount	% of Total			
General Conditions	33,900	67.90%	General Conditions	49,925	
Contingency	33,951	67.90%	Contingency	50,000	
Utility Pole Relocation	3,395	67.90%	Utility Pole Relocation	5,000	
Selective Demolition	1,245	67.90%	Selective Demolition	1,833	
Ped Walkway / Barriers	30,302	67.90%	Ped Walkway / Barriers	44,626	
Dewatering	33,951	67.90%	Dewatering	50,000	
Site Utilities	14,328	67.90%	Site Utilities	21,101	
Shoring	113,432	67.90%	Shoring	167,054	
Earthwork	101,982	67.90%	Earthwork	150,191	
Export Soils	104,694	67.90%	Export Soils	154,185	
Erosion Control	1,494	67.90%	Erosion Control	2,200	
Underslab Drainage	12,000	100.00%	Underslab Drainage	12,000	
Asphalt Concrete Paving	13,580	67.90%	Asphalt Concrete Paving	20,000	
Unit Pavers / Waterproofing	63,750	75.00%	Unit Pavers / Waterproofing	85,000	
Concrete Caissons	64,950	75.00%	Concrete Caissons	86,600	
Landscaping Allowance	10,185	67.90%	Landscaping Allowance	15,000	
Concrete Reinforcement	234,422	80.00%	Concrete Reinforcement	293,028	
Cast-in-Place Concrete	654,300	80.00%	Cast-in-Place Concrete	817,875	
Stud Rail	13,580	67.90%	Stud Rail	20,000	
Grout	679	67.90%	Grout	1,000	
Structural Steel	154,600	100.00%	Structural Steel	154,600	
Metal Joists/Deck	12,600	100.00%	Metal Joists/Deck	12,600	
Dampproofing	2,377	67.90%	Dampproofing	3,500	
Building Insulation	5,610	67.90%	Building Insulation	8,262	
Firestopping	1,358	67.90%	Firestopping	2,000	
Sealants & Caulking	2,943	67.90%	Sealants & Caulking	4,334	
Doors & Frames	2,275	67.90%	Doors & Frames	3,350	
Gypsum Wallboard	17,654	67.90%	Gypsum Wallboard	26,000	
Flooring	5,093	67.90%	Flooring	7,500	
Painting	3,809	67.90%	Painting	5,610	
Identifying Devices / Directory	679	67.90%	Identifying Devices / Directory	1,000	
Hudraulic Elevator	22,294	67.90%	Hudraulic Elevator	32,833	
Fire Protection	13,580	67.90%	Fire Protection	20,000	
Plumbing	32,640	80.00%	Plumbing	40,800	
HVAC	20,778	67.90%	HVAC	30,600	
Electrical	10,185	67.90%	Electrical	15,000	
Security	10,185	67.90%	Security	15,000	
Waterproofing, Parking Garage Only	364,120	100.00%	Waterproofing, Parking Garage Only	364,120	
12" Deck in lieu of composite w/WP & Pavers	(42,344)	100.00%	12" Deck in lieu of composite w/WP & Pavers	(42,344)	
Hard Cost Subtotal	2,180,553		Hard Cost Subtotal	2,751,383	
O/H & Profit (7.5% of Hard Costs)	163,542		O/H & Profit (7.5% of Hard Costs)	206,354	
Safety/Small Tools	12,334		Safety/Small Tools	15,563	
Insurance	23,564		Insurance	29,733	
Builder's Risk	9,426		Builder's Risk	11,893	
Bond	23,178		Bond	29,245	
Subtotal	2,412,596		Subtotal	3,044,171	
Contingency (5% of Hard Costs)	109,028		Contingency (5% of Hard Costs)	137,569	
Total Hard Costs	2,521,624		Total	3,181,740	
Total CAGID Cost Allocation	2,855,788		Combined Total	4,980,458	

DD Cost Summary		
	Total Cost	% of Total
Parking Garage	3,044,171	42.59%
Fellowship	1,388,345	19.42%
Residential	2,715,806	37.99%
Total	7,148,322	100.00%

CAGID Percentages		
Hard Costs	67.90%	55/81 spaces
Soft Costs	28.92%	% of Total Hard Costs times 55/81 spaces

CAGID Cost Summary		
Soft Cost Per Parking Space (55 Spaces)	6.076	
Hard Cost Per Parking Space (55 Spaces)	45.848	
Total Cost Per Space (55 Spaces)	51,923	



TRINITY LUTHERAN CHURCH

A mission outpost in a troubled world

Mark Twietmeyer
Senior Pastor

Terry Schjang
Visitation Pastor

**Director of Youth
Ministries**
Daniel Bock

Valerie Hess
Coordinator of
Music Ministries

Leila Heil
Adult Choir Director

Jeanine Marsh
Youth Choir Director

Melanie Nehls Burow
Coordinator of
Congregational Life

Central Area General Improvement District
Attention: Molly Winter
1500 Pearl St., Suite 302
Boulder, CO 80302

January 19, 2015

Dear Molly,

We want to express again our appreciation to you and CAGID for your positive response to build and manage the underground parking component of our plan to build senior affordable housing on our parking lot. While it is very close to becoming a reality for downtown Boulder, the truth is that it will only be possible if CAGID participates as a partner. CAGID's partnership is essential because without CAGID we simply cannot finance the underground parking, and we would be forced to drop the senior affordable housing so we could retain the remainder of the site for surface parking for our congregation.

So, once again, we are very appreciative and excited by your positive response, and look forward to moving this to completion with you, before the costs of construction rise beyond our reach.

Sincerely,

Mark Twietmeyer, pastor

2200 Broadway
Boulder, CO 80302

Ph: 303-442-2300
Fax: 303-545-5527

Email:
trinityboulder@
hotmail.com

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trinityboulder

Parking evaluation for first phase improvements to the Boulder Civic Park

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Currently City employees pay significantly less than other downtown employees in the CAGID area.

Maximizing On-Street Parking Along Arapahoe Road

One idea for replacing some of the parking, if the library lot is removed or downsized, is to reconfigure the Arapahoe Ave. corridor between Broadway and 9th Streets. By removing the left turn lane at the 11th Street intersection and pushing the sidewalk along the north edge of the roadway north a bit where the City owns the R.O.W., a row of approximately 50 angle parking spaces could be installed along the north edge of Arapahoe Ave. In this context the Arapahoe corridor would be converted to an “access street” with travel lanes narrowed a bit and a number of pedestrian crossing amenities and sidewalk improvements added. This concept is illustrated on Figures 11 and 12, in concert with other potential parking lot adjustments in the area.

It should be noted that the Leader sketch extended angled parking all the way to 9th Street. Figures 11 and 12 illustrate ending the angled parking just east of the Senior Center property. The bus stop at the Senior Center and the grade on Arapahoe would make adding more parking in this area difficult.

Acquiring Property to Provide Replacement Parking In Close Proximity to the Park

Another idea for replacing some of the parking displaced by the library lot closure and the municipal lot downsizing is to acquire property in the southeast corner of the civic campus area (say between 13th and 14th Streets, just north of Arapahoe Road). Older buildings in this area could be removed and a small surface parking lot could be added as a place holder for longer term development plans in this corner of the campus. It is estimated that a surface lot with 50 to 60 spaces could be added in this option.

Shifting Parking from the Civic Campus to the Adjacent CAGID Area

A logical place to shift some of the displaced parking demand from the civic park area is north across Canyon Blvd. into the CAGID area given the downtown’s proximity to the civic campus and the shared parking patterns that occur between the two areas at times. A review of current CAGID parking facility utilization was conducted to determine if the nearby CAGID facilities could accommodate civic park parking demand. Based on information provided by CAGID staff:

Current CAGID Parking Supply, Utilization, and Waiting Lists:

CAGID Parking Facility	Parking Supply (spaces)	Current Peak Mid-day Utilization	Current Waiting List (spaces)
On-Street	810	85% to 90% approx.	n/a
Employee Permit Lots	293	95% approx.	55 to 71 per lot
Structure – 1000 Walnut	556	71%	179
Structure – 1100 Walnut	273	91%	143
Structure – 1400 Walnut	302	75%	275
Structure – 1500 Pearl	686	95%	274
Structure – 11 th & Spruce	392	96%	128

Parking evaluation for first phase improvements to the Boulder Civic Park

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It can be seen that:

- The employee permit surface lots at the east end of the civic campus along 14th Street are full or nearly full (approx. 95%) during peak weekday hours.
- The metered on-street spaces within CAGID continue to have peak mid-day utilization of over 85%. In this context, only a few park users will be able to find on-street parking spaces north of Canyon Blvd. during peak mid-day periods. There are also times, such as Friday and Saturday evenings, when all spaces in the southwest quadrant of CAGID (nearest the civic park) are fully occupied by downtown visitors.
- The five CAGID parking structures have experienced increased utilization in recent years. Three of the structures are nearly full during peak times. The other two structures, which are the ones closest to the civic campus, have lower peak utilization.
- The waiting lists for the CAGID parking structures imply that any vacancy could be eliminated by selling more permits at each structure. CAGID staff typically oversells the permits at each structure and monitors utilization to maintain a balance between long term permit parking and available short term parking in each structure as well.
- A closer look at the waiting lists indicates that the total number of requests for spaces is likely significantly inflated. For example, many people request a space in all five structures when they likely only want the first one that is available. There are also a few businesses or real estate companies who have requested 40 or more spaces in multiple structures. For example, of the 179 permit requests at the 1000 Walnut structure, 110 have been requested by only 5 individuals or companies. In this context it is estimated that the actual demand for parking is likely less than half of the number of spaces on the waiting list.
- Considering the 1000 Walnut structure, a 29% peak period vacancy suggests that 160 spaces might be available. If half of the waiting list actually purchased permits (approx. 90 spaces) it would leave a balance of 70 available parking spaces that might be available to help meet the parking needs of the civic park in the short term planning horizon.
- Considering the 1400 Walnut structure, a 25% vacancy could be completely utilized by selling more permits to those on the waiting list, even if the waiting list is significantly inflated. In this context it would not serve a location to shift some of the long term (employee) parking demand from the civic campus area to the CAGID area.
- To date CAGID's long term planning for needed parking supply in the downtown area has not anticipated providing parking for uses outside of CAGID, such as the civic park. CAGID's long term parking projections that account for the buildout of the downtown area indicate that there will need to be significantly more parking constructed within CAGID, even without providing any parking for uses in the civic campus. It is clear that in the long term, the parking needs of both CAGID and the civic campus will need to be considered together.

Relocating City Employee Parking to Remote Lots in Boulder

Another means of reducing the parking demand in the civic campus would be to relocate all or part of the City employee parking to a remote lot ("edge parking") where frequent transit service would provide access to the downtown City offices. For example, the City owns the recycling yard at the 6400 Arapahoe site, and the eastern third of the site is not currently utilized. This area could easily provide an 80 space parking lot that would be readily served by the JUMP transit route currently, and may also be served by

Table 9-15: Downtown Commercial District Fund, 2015 Fund Financial

DOWNTOWN COMMERCIAL DISTRICT									
	2013	2014	2015	2016	2017	2018	2019	2020	
	Actual	Revised	Recommended	Projected	Projected	Projected	Projected	Projected	Projected
Beginning Fund Balance	\$ 4,332,420	\$ 5,493,478	\$ 5,193,190	\$ 3,441,412	\$ 4,537,948	\$ 5,648,626	\$ 6,671,610	\$ 8,734,193	
Sources of Funds									
Property/Owner Tax	\$ 1,110,605	\$ 1,105,829	\$ 1,127,946	\$ 1,150,505	\$ 1,173,515	\$ 1,196,986	\$ 1,220,925	\$ 1,245,343	
Short Term Fees	1,996,216	1,600,625	1,666,805	1,681,517	1,696,376	1,711,383	1,723,388	1,738,665	
Long Term Fees	2,527,735	2,660,973	3,048,320	3,048,320	3,170,253	3,170,253	3,297,063	3,297,063	
Meterhood & Tokens	43,933	35,000	35,000	35,000	35,000	35,000	35,000	35,000	
Interest	28,405	22,775	32,198	21,337	28,135	35,021	41,364	54,152	
Rental Income	205,517	180,500	175,500	177,250	179,018	180,803	182,606	184,427	
Miscellaneous	16,589	20,535	15,165	15,194	\$15,223	15,252	15,282	15,312	
Transfers In Meters	1,475,000	1,525,000	1,525,000	1,525,000	1,525,000	1,525,000	1,525,000	1,525,000	
Transfer in for 1000 Walnut	-	-	284,748	293,273	274,833	283,297	265,980	272,004	
10th/Walnut - Property, Sales, Accommodations and TIF	1,829,734	889,575	-	-	-	-	-	-	
10th/Walnut- other Revenue	13,224	39,151	39,543	39,938	40,338	40,741	41,149	41,560	
Total Sources of Funds	\$ 9,246,958	\$ 8,079,963	\$ 7,950,225	\$ 7,987,334	\$ 8,137,690	\$ 8,193,736	\$ 8,347,756	\$ 8,408,526	
Uses of Funds									
Operating:-									
Parking Operations	\$ 1,833,617	\$ 1,935,867	\$ 2,060,849	\$ 2,071,441	\$ 2,132,780	\$ 2,196,142	\$ 2,261,600	\$ 2,329,229	
Major Maintenance/Improvements - Parking	848,250	250,000	1,325,000	250,000	250,000	250,000	250,000	250,000	
Downtown & University Hill Management Division	943,519	997,394	1,229,805	1,143,966	1,180,952	1,219,242	1,258,885	1,299,930	
Eco-Pass Program	795,250	\$843,125	843,125	859,988	877,187	894,731	912,626	930,878	
Major Maintenance/Improvements - Downtown	253,990	225,000	225,000	225,000	225,000	225,000	225,000	225,000	
Sick/Vacation Accrual	(8,487)	12,555	12,555	13,057	13,579	14,123	14,688	15,275	
Capital Replacement Reserve	165,675	165,675	165,675	165,675	165,675	165,675	165,675	165,675	
Debt-									
Series 1998	1,008,000	1,012,910	1,016,920	1,021,498	1,024,093	1,030,013	-	-	
Bond Refunding	-	-	-	-	-	-	-	-	
Trinity Lutheran	-	-	1,700,000	-	-	-	-	-	
Series 2003 (10th and Walnut)	901,407	817,214	819,300	821,088	822,574	823,761	826,890	825,063	
Transfers-									
Cost Allocation	229,373	238,283	316,327	332,143	348,750	366,188	384,497	403,722	
Carryover, Encumbrances and Adjustments	-	\$721,674	-	-	-	-	-	-	
Excess TIF to City of Boulder	1,106,820	1,173,109	-	-	-	-	-	-	
Total Uses of Funds	\$ 8,077,413	\$ 8,392,806	\$ 9,714,556	\$ 6,903,855	\$ 7,040,591	\$ 7,184,875	\$ 6,299,860	\$ 6,444,772	
Less: Sick/Vacation Accrual Adjustment	\$ 8,487	\$ (12,555)	\$ (12,555)	\$ (13,057)	\$ (13,579)	\$ (14,123)	\$ (14,688)	\$ (15,275)	
Ending Fund Balance Before Reserves	\$ 5,493,478	\$ 5,193,190	\$ 3,441,414	\$ 4,537,948	\$ 5,648,626	\$ 6,671,610	\$ 8,734,193	\$ 10,713,222	

Table 9-15: Downtown Commercial District Fund, 2015 Fund Financial (Cont.)

	2013 Actual	2014 Revised	2015 Recommended	2016 Projected	2017 Projected	2018 Projected	2019 Projected	2020 Projected
Reserves								
Designated Reserve	\$ 436,235	\$ 442,962	\$ 586,201	\$ 472,913	\$ 484,517	\$ 496,491	\$ 508,847	\$ 521,599
Pay Period 27 - 2013 Reserve	72,736	86,236	99,736	113,236	126,736	140,236	153,736	167,236
Sick and Vacation Liability Reserve	143,225	155,780	168,335	181,392	194,972	209,094	223,782	239,057
Reserve-CAGID 10th and Walnut Debt Service	285,089	285,089	285,089	285,089	285,089	285,089	285,089	285,089
Total Reserves	\$ 937,285	\$ 970,067	\$ 1,139,361	\$ 1,052,630	\$ 1,091,314	\$ 1,130,911	\$ 1,171,454	\$ 1,212,981
Ending Fund Balance After Reserves	\$ 4,556,193	\$ 4,223,123	\$ 2,302,053	\$ 3,485,318	\$ 4,557,312	\$ 5,540,699	\$ 7,562,739	\$ 9,500,242

AMPS District Strategies for Downtown

- Additional Travel Demand Management Programs and Transit: TDM programs are often designed and implemented in tandem with parking management strategies. Exploring additional first and last mile programs and strategies provide increased incentives and options for using other modes of travel. These include additional car share options, parking cash-out by employers, expanding bike share opportunities and enhanced bike parking. Additional transit options with other areas of the region have been identified as a major component to providing viable options for employees who live outside the city of Boulder. The county is leading an effort to explore a community wide Eco Pass. Also, intra-city, user friendly transportation options could make it easier to travel around the city. A dedicated trolley between Boulder Junction and downtown has been suggested as a benefit to both areas.
- Public/private partnerships of shared parking: CAGID partnering with private entities to provide the resources to include parking in their redevelopments or to increase the amount of parking that the project is planning for to meet their needs. An example of is the Trinity Commons project.
- Public/public partnerships of shared parking: CAGID partnering with a governmental entity. An example of this approach is partnering with the city of Boulder on the Civic Area Plan redevelopment. As part of the vision plan, two structured and/or underground parking facilities are included in the long term vision. CAGID could play a role in financing and managing the parking should it be mutually beneficial.
- Edge Parking: CAGID partnering with private or public entities to provide peripheral parking outside of the downtown area that is part of a mixed use development. Edge parking would be a part of a shared facility and ideally located in conjunction with a mobility hub along a high frequency transit. With this approach, downtown employees could park remotely and shuttle into the downtown. Edge parking concept could also be used during major special events. An example of this approach is working with the Amory project in North Boulder to add additional parking to the facility. Another opportunity is coordination with the Envision East Arapaho project. The use could be shared – downtown employees parking during the day and residents at night. Staff is commissioning a study to analyze how this approach of edge parking could benefit downtown.
- Additional parking management: Staff will also be looking at a number of other strategies to more effectively manage the existing and future parking supply. These will include the design of parking products and consideration of parking pricing to maximize the valuable resource and ensure balance of all modes of travel. The replacement of the garage gate access and revenue control system in 2015 will enable more accurate tracking of utilization data which can better inform parking management decisions.

ATTACHMENT F: AMPS District Management Strategies

- **Role of Regulation:** The AMPS project will be exploring the potential of planning and zoning changes to meet the goals and principles of the AMPS project. These include both regulations about automobile and bike parking.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE: Discussion and direction on development-related impact fees and excise taxes.

PRESENTER/S

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning and Sustainability
Susan Richstone, Deputy Director of Community Planning and Sustainability
Tom Carr, City Attorney
David Gehr, Deputy City Attorney

EXECUTIVE SUMMARY

The purpose of this item is to seek council direction on:

1. Moving forward to review and update the city's current development-related impact fees and excise taxes, and to consider potential new development-related fees, including a housing linkage fee. A housing linkage fee is charged on new non-residential uses to mitigate impacts on the demand for affordable housing created by those uses.
2. Whether to move forward in the short term to put in place a citywide housing linkage fee based upon the 2009 TischlerBise Development Excise Tax Study and the existing fee already in place for commercial development utilizing the floor area ratio (FAR) bonus policy in the DT-5 (downtown) zone district (Attachment A, pp. 16-20).

One of the community concerns raised over the past year has been related to whether current development-related fees and taxes are fully implementing the city's policy that "growth pay its own way." Policy 1.30 *Growth to Pay Fair Share of New Facility Costs* of the Boulder Valley Comprehensive Plan states that "... Growth will be expected to pay its own way, with the requirement that new development pay the cost of providing

needed facilities and an equitable share of services, including affordable housing, and to mitigate negative impacts such as those to the transportation system.”

The intent of this work plan item is to update the city’s development-related impact fees and taxes to ensure that they reflect the current costs of growth. Community concerns have been expressed that the economic recovery in the past few years combined with increased housing costs have only further increased the need for low, moderate and middle income housing in the community in addition to impacting city infrastructure. Some community members have expressed a concern that the current fee structure is not keeping up with current economic trends.

Staff would like council’s direction on the following proposed next steps:

1. Bring forward an ordinance for City Council consideration later this month to put in place a housing linkage fee based on the analysis in the 2009 TischlerBise Excise Tax Study and existing housing linkage fee in the DT-5 zone district. The linkage fee in the DT-5 district applies only to the commercial floor area resulting from application of the downtown floor area ratio (FAR) bonus for office space. Impact fees are assessed at the time of building permit. If council supports moving forward in the short term to put in place a citywide housing linkage fee, council will need to decide the effective date for applying the fee. Development-related fees and taxes are assessed at the time of building permit application and paid prior to final inspection.
2. Move forward to hire a firm or firms to both update the city’s current fees and/ or excise taxes and prepare any additional studies including a potential commercial linkage fee for affordable housing.

On February 10, Carson Bise, President of TischlerBise, will be meeting with City Council. The purpose of the session with City Council is to provide an assessment of the city’s current range of development-related fees and taxes relative to best practices, identify any gaps, and hear initial council input on desired changes and the potential scope of a study or studies moving forward. On Wednesday February 11, there will be a community forum at BMoCA from 5-7 pm on the topic of development – related fees and taxes.

BACKGROUND

The city contracted with the firm of TischlerBise in 2008 to prepare a Development Excise Tax and Impact Fee study in order to evaluate all of the components of the city’s Development Excise Tax and consider potential changes related to impact fees. These studies are included as Attachments A and B. The impetus for the study was that the Development Excise Tax and Housing Excise Tax were at or near the limits the city could charge based on the ballot item approved by the voters, and the belief was that the level of the excise taxes did not cover the growth-related costs for the services included.

As a result of the 2009 study and council direction:

1. At the beginning of 2010, the city implemented capital facility impact fees and allocated DET capacity to address growth-related costs for fire, human services, library, police, municipal facilities, parks and recreation capital improvements, transportation, and parkland. This was a significant change to the city's development-related tax/ fee structure and, due to concerns about the overall cost increase in fees and taxes (including Plant Investment Fees for the various city utilities), City Council reduced the Education Excise Tax to zero. In addition, City Council approved placing an increase to the Housing Excise Tax (based on the rates in the 2009 study) on the ballot. The ballot item did not pass.
2. In 2011, City Council amended Section 9-8-1 Table 8-2 "Floor Area Additions" B.R.C. 1981 to allow for floor area additions of up to a maximum of 1.0 for commercial uses in DT-5 zone district and establish a housing linkage fee that would apply to the additional commercial square footage.

The changes implemented in 2010 put in place *impact fees* to fund growth-related capital improvements for a number of city services formerly included in the DET. Prior to 2010, the city had in place *excise taxes* approved by the voters in 1998. Impact fees and excise taxes are both used to fund capital improvements and address impacts of new development. An impact fee must be based on a study that establishes the nexus between the impact of development, amount of the fee and how the funds will be spent (see additional information below). An excise tax requires approval by the voters of the proposed tax. In 1996, the firm of Tischler and Associates prepared a study for the city that recommended significant increases to the city's development excise taxes in effect at that time. In 1997, City Council placed a proposal on the ballot that reduced the rates recommended in the 1996 study. That ballot measure failed. In 1998, a proposal that basically took the previous rate and increased it by the rate of inflation was placed on the ballot. That measure passed and new rates were set beginning in 1999.

Change to the DT-5 Zone District

The base FAR in the DT-5 is 1.7. Prior to 2011, developments in the Downtown could be approved for up to 2.7 FAR (a 1.0 FAR addition) if the additional square footage was for housing (.5) and/or structured parking (.5). In 2011, this "FAR bonus" policy was amended to also allow additional square footage above the 1.7 base FAR for commercial uses. This policy change also put in place the city's first "linkage fee" for affordable housing, with the floor area addition subject to the established fee. The purpose of the change was to provide the opportunity for "Class A" office space in the downtown where there was very little available, particularly larger office floor plates.

The linkage fee is intended to offset some of the affordable housing impacts that the additional floor area would have on the community. The DT-5 linkage fee is currently set at \$9.53 per square foot and has been applied to four downtown developments that have opted to use the commercial FAR bonus. Approximately \$875,000 has been collected from the linkage fee into the city's affordable housing program as a result of this policy.

Background on Impact Fees

An “impact fee” is a one time fee to fund capital improvements necessitated by new development. Colorado law explicitly authorizes municipalities to impose impact fees to defray the cost of any improvements that are necessary to accommodate new developments and also sets out requirements for the adoption of impact fees including:

1. The fee is for capital facilities needed to serve new development
2. The amount of the fee must be based upon “the reasonable impacts of proposed development on existing capital facilities” and must be assessed at a level no greater than necessary to defray the impacts directly related to the proposed development
3. A “capital facility” is “any improvement or facility that: (a) is directly related to any service that a local government is authorized to provide; (b) has an estimated useful life of five years or longer; and (c) is required by the charter or general policy of a local government pursuant to resolution or ordinance.”
4. An impact fee cannot be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.
5. The fee needs to be based on a study that quantifies the impacts.
6. The fee needs to be accounted for separately and earmarked for the capital expenses for which they were collected.

There are three basic methods used to calculate impact fees:

1. **Incremental Expansion** – documents the current level of service for each type of public facility. The intent is to use revenue collected to expand or provide additional facilities as needed to accommodate new development, based on the current cost to provide capital improvements.
2. **Plan-based** – commonly used for public facilities that have adopted plans or engineering studies to guide capital improvements, such as utility systems.
3. **Cost recovery** – based on the rationale that new development is paying for its share of the useful life and remaining unused capacity of an existing facility.

The incremental expansion method was used for all of the components of the city’s impact fees except for library space and police communications center.

ANALYSIS

Current Impact Fee and Excise Tax Rates

Attachment D includes the city’s current tax/fee schedule for the Development Excise Tax (DET), Housing Excise Tax (HET), and Capital Facility Impact Fees.

While impact fees may be implemented by the city based on a study as outlined above, excise taxes are approved by the voters. The city’s current DET rate for non-residential development and HET rates for both residential and non-residential development are at the maximum rate approved by the voters in 1998. The DET for residential development has some remaining capacity. Based on the appropriate studies, the city could transition

from excise taxes to a housing linkage fee as well as a transportation impact fee and park land fee, or choose to leave some or all of these as excise taxes. However, increases to the maximum amount that can be charged would require approval by Boulder voters.

Implementation of a Housing Linkage Fee Citywide based on the 2009 TischlerBise Study

If the City Council supports moving forward in the short term to put in place a citywide housing linkage fee, the following chart shows what the rate would be, based on the 2009 study adjusted for cost increases. The table below includes all of the categories of uses that would be included based on the 2009 study. Please note that for certain uses the fee would be based on number of rooms, beds or students as opposed to square footage. This would be an interim measure until a new linkage fee study is prepared.

Nonresidential (Floor Area)

	<i>Fee per sq. ft.</i>
Retail/Restaurant	\$6.96
Business Park	\$7.70
Office	\$9.53
Hospital	\$8.23
School	\$2.24
Mini-Warehouse	\$0.09
Warehousing	\$3.11
Light Industrial	\$5.62

Other Nonresidential

	<i>Fee per Demand Indicator</i>
Nursing Home (per bed)	\$877.64
Day Care (per student)	\$389.60
Lodging (per room)	\$1,072.44

Attachment C includes a list of projects that have site plan approvals but have not yet applied for a building permit. An important caveat to note is that the linkage fee would apply to net new square footage and to a change in use of existing square footage. Therefore, for example, in the case of the Eads/ Golden Buff project, existing hotel rooms and non-residential square footage would be credited. Staff is working on providing information on pre-existing square footage and use prior to Tuesday's meeting to complete the table.

Any linkage fee put in place at this time would be updated by the new study, with the appropriate fee level established based on updated data and analysis.

Non-residential development in recent years

Staff was requested to calculate how much would have been collected over the past few years had the city implemented a citywide housing linkage fee at the time the linkage fee was implemented for the FAR bonus in the DT-5 zone in late 2011.

Based on analysis of building permit records, city staff estimates that between November 1, 2011 and the end of 2014, the city would have assessed between \$7 and \$8 million in fees on approximately one million square feet of new non-residential development. This preliminary analysis was based on additional square footage of nonresidential space included in building permit applications from November 2011 through the end of December 2014 (subtracting out the square footage that paid the existing linkage fee and some of the larger projects that had existing buildings on the site). Since the fee varies by type of non-residential use, this is a rough estimate and staff was not able to go back through every permit and verify the specific nature of the use. A more in depth analysis of the uses, square footage by uses, and demolitions would be needed to develop a more refined estimate. Impact fees are assessed on net new square footage and also for change in use.

The [workbook](#) prepared for the Design Excellence Initiative tour in fall 2014 included information on some of the fees and taxes paid for the five recent developments visited. The Impact Fees and Excise Taxes paid by each of these five projects is listed below:

Two Nine North (1925 30 th St.):	\$2,806,274
Solana Apartments (3100 Pearl):	\$4,594,567
Province Apartments (950 28 th St.)	\$4,673,752
1600 Pearl (3 rd floor addition)	\$68,730
Gas Lamp (910 28 th St.)	\$277,775

It is important to note that the Two Nine North project paid excise taxes under the structure in place prior to 2010. Therefore, it includes payment of approximately \$370,000 in Education Excise Tax and does not include any of the Capital Facility Impact Fees implemented in 2010.

NEXT STEPS

Staff is requesting council direction on the following items:

1. Whether, given the high rate of current development and related concerns staff should move forward in the first half of the year to both update current fees and consider new fees such as a citywide housing linkage fee.
2. Whether to move forward immediately to establish a citywide housing linkage fee based on the 2008 TischlerBise study.

ATTACHMENTS

- A: 2008 TischlerBise Development Excise Tax Study
- B: 2008 TischlerBise Development Impact Fee Study
- C: Recently Approved Site Review Projects that have not yet applied for Building Permits
- D: City of Boulder current Development Excise Tax (DET), Housing Excise Tax (HET), and Capital Facility Impact Fees

DEVELOPMENT EXCISE TAX STUDY

City of Boulder, Colorado



January 9, 2009

Prepared By:

TischlerBise
Fiscal, Economic & Planning Consultants

DEVELOPMENT EXCISE TAX STUDY
City of Boulder, Colorado

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EXECUTIVE SUMMARY

OVERVIEW

The City of Boulder retained TischlerBise to prepare an excise tax study for various infrastructure categories. This report is an update to a Development Excise Tax (DET) study prepared in 1996 when the same consulting firm was known as Tischler & Associates, Inc. Although the City currently has development excise taxes in place for libraries, parks/recreation, human services, municipal services, police, and fire infrastructure, the City's may decide to implement impact fees for these facilities. In addition, the City of Boulder is considering continuation of excise taxes for transportation and affordable housing, while adding new excise taxes for vehicles/equipment and park land.

Excise taxes are one-time revenues often used to fund new infrastructure needed to accommodate new development. An excise tax is imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege. In some states, home-rule cities may impose excise taxes using general taxation powers. Other states have limited the use of excise taxes to jurisdictions that have special enabling legislation. The City of Boulder has legislative authority to impose development excise taxes upon approval of the voters.

Excise taxes differ from impact fees in that they are primarily a tool for raising revenue, as opposed to a land use regulation designed to provide growth-related facilities. In addition, excise taxes do not have to be earmarked or accounted for separately from the City's general revenue, do not have to specifically benefit new growth, and are generally more flexible than impact fees. Excise taxes can be applied in several ways. Some communities apply a rate to the construction value of the new development; others use a flat fee per acre of development, while other communities apply a straight fee by type of housing unit or square-foot of development. In Boulder, the current DET is assessed per housing unit by type of unit (detached and attached) and per square foot of nonresidential development regardless of type.

DEVELOPMENT EXCISE TAX SUMMARY

Figure 1 summarizes the proposed development excise tax methodologies and cost components. Updated development excise taxes have been calculated for Transportation and Affordable Housing. The Transportation development excise tax is based on capital costs from the 2003 Transportation Master Plan (TMP) and is provided for both the Action Plan and Vision Plan. The improvements on which the excise tax is based include projects to enhance mobility and access through multimodal facilities including roads, intersections, bike lanes, underpasses, and pedestrian enhancements. The Transportation DET would be paid by both residential and nonresidential development.

The Affordable Housing development excise tax is based on the cost to the City to meet Boulder's future affordable housing needs. This excise tax would be paid only by nonresidential development, as employment is the most direct generator of affordable housing needs. The recommended DET component uses a plan-based methodology driven by the City's adopted goal for affordable housing and the cost to the City to subsidize the provision of affordable units.

A new excise tax for Vehicles and Equipment will be used to expand the City's fleet to maintain the current infrastructure standard. This excise tax uses the same calculation steps as the impact fee for Municipal Facilities, with both residential and nonresidential development paying the cost of additional vehicles and equipment.

The City of Boulder has a high level of service for park land. Boulder's 2006 Parks Master Plan documents numerous undeveloped park sites (see page 20) and states park acreage "meets the guidelines for Boulder's projected population at build-out." (see page 23) Consistent with this finding, the Park Land excise tax is derived using the current inventory of park and recreation sites and projected population in 2030.

Figure 1. Summary of Proposed Excise Tax Methodologies and Cost Components

Type of Public Facility	Method	Cost Allocation
<i>Transportation</i>	▪ Plan-based cost of multimodal transportation corridor improvements	Residential and Nonresidential Average Weekday Vehicle Trips
<i>Affordable Housing</i>	▪ Plan-based City cost to subsidize affordable housing	100% Nonresidential
<i>Vehicles and Equipment</i>	▪ Incremental expansion cost of vehicles and equipment	Population and Jobs
<i>Park Land</i>	▪ Buy-in	100% Residential

DEVELOPMENT EXCISE TAXES BY TYPE OF LAND USE

Figures 2, 3, and 4 provide schedules of Development Excise Taxes for residential and nonresidential development. The Transportation Excise Tax is provided for both the Action Plan and Vision Plan (see the Transportation chapter for additional details on these options). Residential excise taxes vary by type and size of housing, based on finished floor area. Figure 2 indicates transportation excise tax amounts for single family housing. For comparison with the current transportation excise tax, the proposed amount for an average size unit is shown with grey shading at the top of the following table. On the right side of the table below, proposed increases assume implementation of excise taxes for transportation, vehicles/equipment, and park land.

Figure 1. Summary of Development Excise Taxes for Single Family Residential

Single Family	TRANSPORTATION				Current Transportation Excise Tax	Proposed Increase	
	Action Plan	Vision Plan	Vehicles and Equipment	Park Land		Action Plan	Vision Plan
Average Size	\$9,143	\$11,132	\$391	\$4,241	\$2,062	\$11,713	\$13,702
Square Feet							
900 or less	\$4,033	\$4,910	\$170	\$1,844		\$3,985	\$4,862
1,000	\$4,644	\$5,654	\$197	\$2,138		\$4,917	\$5,927
1,100	\$5,196	\$6,326	\$221	\$2,397		\$5,752	\$6,882
1,200	\$5,700	\$6,940	\$243	\$2,634		\$6,515	\$7,755
1,300	\$6,164	\$7,505	\$263	\$2,852		\$7,217	\$8,558
1,400	\$6,593	\$8,027	\$281	\$3,053		\$7,865	\$9,299
1,500	\$6,993	\$8,514	\$299	\$3,241		\$8,471	\$9,992
1,600	\$7,367	\$8,969	\$315	\$3,416		\$9,036	\$10,638
1,700	\$7,718	\$9,397	\$330	\$3,581		\$9,567	\$11,246
1,800	\$8,050	\$9,800	\$344	\$3,736		\$10,068	\$11,818
1,900	\$8,363	\$10,182	\$358	\$3,883		\$10,542	\$12,361
2,000	\$8,660	\$10,544	\$371	\$4,023		\$10,992	\$12,876
2,100	\$8,943	\$10,888	\$383	\$4,155		\$11,419	\$13,364
2,200	\$9,213	\$11,216	\$395	\$4,282		\$11,828	\$13,831
2,300	\$9,470	\$11,530	\$406	\$4,403		\$12,217	\$14,277
2,400	\$9,717	\$11,830	\$416	\$4,518		\$12,589	\$14,702
2,500	\$9,953	\$12,118	\$427	\$4,629		\$12,947	\$15,112
2,600	\$10,181	\$12,395	\$436	\$4,736		\$13,291	\$15,505
2,700	\$10,399	\$12,661	\$446	\$4,838		\$13,621	\$15,883
2,800	\$10,610	\$12,918	\$455	\$4,937		\$13,940	\$16,248
2,900	\$10,813	\$13,165	\$464	\$5,033		\$14,248	\$16,600
3,000	\$11,010	\$13,404	\$472	\$5,125		\$14,545	\$16,939
3,100	\$11,200	\$13,636	\$481	\$5,214		\$14,833	\$17,269
3,200	\$11,384	\$13,860	\$489	\$5,300		\$15,111	\$17,587
3,300	\$11,562	\$14,077	\$496	\$5,384		\$15,380	\$17,895
3,400	\$11,735	\$14,287	\$504	\$5,465		\$15,642	\$18,194
3,500	\$11,903	\$14,492	\$511	\$5,544		\$15,896	\$18,485
3,600	\$12,066	\$14,691	\$518	\$5,621		\$16,143	\$18,768
3,700	\$12,225	\$14,884	\$525	\$5,695		\$16,383	\$19,042

Figure 3 indicates transportation excise tax amounts for multifamily housing. For comparison with the current transportation excise tax, the proposed amount for an average size unit is shown with grey shading at the top of the following table. On the right side of the table below, proposed increases assume implementation of excise taxes for transportation, vehicles/equipment, and park land.

Figure 2. Summary of Development Excise Taxes for Multifamily Residential

Multifamily	TRANSPORTATION				Current Transportation Excise Tax	Proposed Increase	
	Action Plan	Vision Plan	Vehicles and Equipment	Park Land		Action Plan	Vision Plan
Average Size Square Feet	\$6,819	\$8,301	\$272	\$2,950	\$1,245	\$8,796	\$10,278
600	\$5,625	\$6,848	\$179	\$1,949		\$6,508	\$7,731
700	\$5,992	\$7,295	\$217	\$2,359		\$7,323	\$8,626
800	\$6,359	\$7,742	\$250	\$2,714		\$8,078	\$9,461
900	\$6,726	\$8,189	\$279	\$3,028		\$8,788	\$10,251
1,000	\$7,093	\$8,636	\$305	\$3,308		\$9,461	\$11,004
1,100	\$7,460	\$9,083	\$328	\$3,562		\$10,105	\$11,728
1,200	\$7,827	\$9,530	\$350	\$3,794		\$10,726	\$12,429
1,300	\$8,195	\$9,977	\$369	\$4,007		\$11,326	\$13,108
1,400	\$8,562	\$10,424	\$387	\$4,204		\$11,908	\$13,770
1,500	\$8,929	\$10,871	\$404	\$4,388		\$12,476	\$14,418
1,600	\$9,296	\$11,318	\$420	\$4,560		\$13,031	\$15,053

Current excise taxes for nonresidential development do not vary by type. Proposed excise taxes for nonresidential development are shown in Figure 4. At the top of the table are development categories with tax amounts per square foot of floor area. Development categories shown at the bottom have unique demand indicators, such as the number of students in a day care center. On the right side of the table below, proposed increases assume implementation of excise taxes for transportation, affordable housing, and vehicles/equipment.

Figure 3. Summary of Development Excise Taxes for Nonresidential Development

ITE Code	TRANSPORTATION				Current Transportation plus Housing Excise Tax	Proposed Increase		
	Action Plan	Vision Plan	Affordable Housing	Vehicles and Equipment		Action Plan	Vision Plan	
<i>Nonresidential (per Square Foot of Floor Area)</i>								
820	Retail / Restaurant	\$55.27	\$67.29	\$6.65	\$0.19	\$2.28	\$59.83	\$71.85
770	Business Park	\$13.14	\$16.00	\$7.35	\$0.22	\$2.28	\$18.43	\$21.29
710	Office	\$18.90	\$23.01	\$9.10	\$0.27	\$2.28	\$25.99	\$30.10
610	Hospital	\$18.09	\$22.03	\$7.86	\$0.23	\$2.28	\$23.90	\$27.84
520	School	\$9.85	\$11.99	\$2.14	\$0.06	\$2.28	\$9.77	\$11.91
151	Mini-Warehouse	\$2.57	\$3.13	\$0.09	\$0.00	\$2.28	\$0.38	\$0.94
150	Warehousing	\$5.10	\$6.21	\$2.97	\$0.08	\$2.28	\$5.87	\$6.98
110	Light Industrial	\$7.17	\$8.74	\$5.37	\$0.16	\$2.28	\$10.42	\$11.99
<i>Other Nonresidential (per unique demand indicator)</i>								
620	Nursing Home (per bed)	\$2,441	\$2,971	\$838	\$25			
565	Day Care (per student)	\$2,214	\$2,696	\$372	\$11			
320	Lodging (per room)	\$5,798	\$7,060	\$1,024	\$30			

TRANSPORTATION EXCISE TAX

It is common practice for jurisdictions to require project-level improvements to be addressed through development exactions that remain roughly proportional to a specific project. Project-level improvements are typically specified in a development agreement. In contrast, system improvements may benefit multiple development projects or even the entire jurisdiction. System improvements are funded by development impact fees or development excise taxes. The City of Boulder has legislative authority to impose a transportation excise tax upon approval of the voters.

To derive a maximum supportable Transportation Excise Tax for the city of Boulder, TischlerBise used the planned capital enhancements and improvements from the 2003 Transportation Master Plan (TMP). The TMP provides three transportation investment programs based on different levels of funding: Current Funding, the Action Plan and the Vision Plan. For the Transportation Excise Tax, planned improvements at two funding levels in the TMP—Action Plan and Vision Plan—have been included as potential policy options in selection of the appropriate transportation excise tax.

The Action Plan represents the next best steps toward reaching the community's transportation goals, as outlined in the TMP, if additional funding becomes available. Pursuing and funding the Action Plan would approximately double the number of corridor segments that could be fully developed into multimodal environments. The Vision reflects the completed multimodal system desired by the community, as reflected in the TMP. Using both Plan levels provides information and flexibility for the City in its decision making regarding transportation improvements and funding.

To derive the maximum supportable Transportation Excise Tax, total City costs benefiting growth from the TMP, at both Action and Vision Plan levels, are used and allocated 100 percent to new development. Projects included in the Plans are enhancements and capital improvements and do not reflect replacement or maintenance of existing facilities. The TMP Action Plan and Vision Plan improvements are shown in Figure 5 and include such multimodal improvements and enhancements as road improvements, intersections, bike lanes, underpasses, and pedestrian enhancements for the corridors shown. Since construction costs have increased almost 40 percent (per Colorado Department of Transportation) over the past five years, the City's share of the capital cost is inflated to 2008 dollars and is now estimated to be approximately \$176 million for the Action Plan and \$214 for the Vision Plan.

Figure 5. Transportation Action and Vision Plans and Capital Costs

	Rank	Multimodal Corridor	Total Cost	City Cost	
ACTION PLAN	VISION PLAN	1	28th St- Iris to Arapahoe	\$128,434,372	\$35,612,585
		2	28th St- Arapahoe to Baseline	\$9,391,715	\$4,349,322
		3	Arapahoe- Folsom to 33rd St	\$7,152,295	\$2,433,915
		4	Broadway- Balsam to 27th Way	\$8,416,263	\$5,697,951
		5	Broadway- 27th Way to Table Mesa	\$3,169,117	\$3,142,237
		6	Pearl Pkwy- 28th St to Foothills	\$20,420,800	\$11,946,350
		7	Arapahoe- 33rd to 55th St	\$14,553,999	\$6,791,248
		8	Table Mesa- Moorehead to 55th St	\$3,776,511	\$3,509,050
		9	Pearl- Broadway to 28th St	\$435,921	\$406,143
		10	Arapahoe- 55th St to Westview Dr	\$24,938,766	\$8,850,750
		11	Arapahoe/Canyon- Pearl to Folsom	\$574,029	\$574,029
		12	Diagonal Hwy- 28th St to Fourmile Creek	\$8,905,728	\$6,393,203
		13	Table Mesa- Broadway to Moorehead	\$211,037	\$211,037
		14	Broadway- Table Mesa to Greenbriar Blvd	\$2,405,353	\$614,032
		15	Pearl Pkwy- Foothills to 55th St	\$9,997,108	\$7,019,306
		16	55th St- Valmont to Arapahoe	\$2,722,832	\$1,585,380
		17	Foothills Hwy- Baseline to US 36	\$51,914	\$51,914
		18	Broadway- Iris Av to Balsam Av	\$11,307,368	\$2,521,668
		19	Broadway- North US 36 to Violet AV	\$26,221,677	\$10,355,789
		20	28th St- Jay Rd to Iris Av	\$6,075,386	\$4,839,406
		21	Diagonal Hwy- Fourmile Creek to 71st St	\$12,053,797	\$8,894,628
ACTION PLAN TOTAL			\$301,215,989	\$125,799,942	
Construction Cost Increase 2003 to 2008*				1.4	
ACTION PLAN Current City Cost (rounded)				\$176,120,000	
		22	Baseline- 32nd St to 55th St	\$856,782	\$606,298
		23	US 36- Baseline easement to planning area boundary	\$6,361,787	\$3,382,173
		24	Broadway Violet Av to Iris Av	\$6,592,970	\$4,866,254
		25	Baseline- Broadway to 33rd	\$0	\$0
		26	Table Mesa- Vassar to Broadway	\$1,843,153	\$1,843,153
		27	Valmont- 28th St to Foothills Hwy	\$3,307,986	\$2,556,856
		28	South Boulder Rd- 55th to 76th St	\$97,880	\$97,880
		29	Foothills Hwy- Goose Creek to Colorado Blvd	\$3,584,379	\$200,000
		30	Foothills Hwy- Colorado to Baseline	\$349,469	\$349,469
		31	Arapahoe- Westview Dr to 75th St	\$3,443,587	\$403,177
		32	Balsam/Edgewood/Valmont- Broadway to 28th St	\$26,688	\$26,688
		33	Valmont- Foothills Hwy to Pearl Pkwy	\$2,283,663	\$2,149,913
		34	Pearl Pkwy- 55th to Jay Rd	\$1,752,170	\$583,338
		35	28th St- North Broadway to Jay Rd	\$7,067,035	\$5,387,596
		36	Baseline- 9th St to Broadway	\$844,226	\$673,070
		37	Foothills Hwy- Diagonal to Goose Creek	\$309,848	\$179,608
		38	55th St- Arapahoe to Baseline	\$433,520	\$433,520
		39	Iris Av- Broadway to 28th St	\$1,926,498	\$1,108,098
		40	63rd Street- Jay Rd to Diagonal	\$6,585,692	\$2,500,412
		41	Baseline- 55th St to 75th St	\$209,793	\$0
VISION PLAN TOTAL			\$349,093,114	\$153,147,445	
Construction Cost Increase 2003 to 2008*				1.4	
VISION PLAN Current City Cost (rounded)				\$214,406,000	

* Colorado Department of Transportation (per City of Boulder)

Calibration of the transportation excise tax requires projected development in the City of Boulder to be converted into average weekday vehicle trips, as described in the following sections. It should be noted that while Boulder’s transportation system is multimodal in nature, use of vehicle trips is a reasonable proxy to determine the relative demand and resulting proportionate share, by type of land use, for transportation improvements.

Trip Generation by Size of Housing

TischlerBise used Census 2000 data for the City of Boulder to derive custom trip generation rates by type of housing, as shown in Figure 6. Boulder-specific trip generation rates for residential development are lower than the national averages.

Figure 6. Residential Trip Generation Rates by Type of Housing in Boulder

Boulder, Colorado		<i>Households (2)</i>			<i>Vehicles per Household by Tenure</i>
	<i>Vehicles Available (1)</i>	<i>Single Family</i>	<i>Multi-family</i>	<i>Total</i>	
Owner-occupied	35,163	16,596	2,992	19,588	1.80
Renter-occupied	29,294	4,864	15,187	20,051	1.46
TOTAL	64,457	21,460	18,179	39,639	1.63
		54.14%	45.86%		

	<i>Persons (3)</i>	<i>Trip Ends (4)</i>	<i>Vehicles by Type of Housing</i>	<i>Trip Ends (5)</i>	<i>Average Trip Ends</i>	<i>Trip Ends per Household</i>
Single Family	53,709	139,467	36,898	213,240	176,353	8.22
Multifamily	33,292	114,162	27,559	108,875	111,518	6.13
TOTAL	87,001	253,628	64,457	322,116	287,872	7.26

- (1) Vehicles available by tenure from Table H46, SF3, Census 2000.
- (2) Households by tenure and units in structure from table H32, SF3, Census 2000.
- (3) Persons by units in structure from table H33, SF3, Census 2000.
- (4) Vehicle trips ends based on persons using formulas from Trip Generation (ITE 2003). For Single Family, fitted curve equation is $EXP(0.91*LN(persons)+1.52)$. To fit within the data range of the ITE studies, the number of persons was divided by 100 and the equation result multiplied by 100. For Multifamily, fitted curve equation is $(3.43*persons)+30.02$.
- (5) Vehicle trip ends based on vehicles available using formulas from Trip Generation (ITE 2003). For Single Family, fitted curve equation is $EXP(0.99*LN(vehicles)+1.81)$. To fit within the data range of the ITE studies, the number of vehicles available was divided by 140 and the equation result multiplied by 140. For Multifamily, fitted curve equation is $(3.94*vehicles)+293.58$.

As noted above, Boulder's transportation excise tax calculations are based on average weekday vehicle trip ends. Trip generation rates are from the reference book Trip Generation (ITE 2003). A vehicle trip end represents a vehicle either entering or exiting a development (as if a traffic counter were placed across a driveway). To calculate transportation excise taxes, trip generation rates are adjusted to avoid double counting each trip at both the origin and destination points. Therefore, the basic trip adjustment factor is 50%. As discussed further below, the excise tax methodology includes additional adjustments to make the tax rates proportionate to the infrastructure demand for particular types of development. Residential development has a larger trip adjustment factor of 54% to account for commuters leaving the City of Boulder for work. According to the 2001 National Household Travel Survey (see Table 29, in the Federal Highway Administration publication dated 12/04), home-based weekday work trips are typically 31% of production trips (i.e., all out-bound trips, which are 50% of all trip ends). Also, Census 2000 data from Table P26 in Summary File 3 indicates that 28% of Boulder workers travel outside the city for work. In combination, these factors ($0.31 \times 0.50 \times 0.28 = 0.04$) support the additional 4% allocation of trips to residential development.

Data contained in the 2004 ITE publication titled Trip Generation Handbook indicate an inverse relationship between commercial building size and pass-by trips. Appropriate trip adjustment factors may be calculated according to commercial building size. For commercial developments, the trip adjustment factor is less than 50% because retail development often attracts vehicles as they pass by on arterial and collector roads. For example, when someone stops at a convenience store on the way home from work, the convenience store is not the primary destination. For a small commercial building of 50,000 square feet of floor area, the ITE data indicates that on average 39% of the vehicles that enter are passing by on their way to some other primary destination. The remaining 61% of attraction trips have the commercial building as their primary destination. Because attraction trips are half of all trips, the trip adjustment factor is 61% multiplied by 50%, or approximately 31% of the trip ends.

Figure 7 summarizes the input variables used to determine the transportation cost allocation by type of development. Please see Appendix A for a more detailed explanation of the demographic data. In the table below HU means housing unit, KSF means square feet of nonresidential development, in thousands, and ITE stands for the Institute of Transportation Engineers.

Figure 7. Development Prototypes and Vehicle Trip Inputs

	<i>ITE Code</i>	<i>Dev Type</i>	<i>Wkdy Veh Trip Ends</i>	<i>Dev Unit</i>	<i>Trip Adj Factor</i>
R1	210	Single Family Res	8.22	HU	54%
R2	220	All Other Res	6.13	HU	54%
NR1	150	Goods Production	4.96	KSF	50%
NR2	820	Retail/Restaurant	86.56	KSF	31%
NR3	110	Other Services	6.97	KSF	50%

Figure 8 shows projected travel demand (average weekday trips) based on the input variables discussed above. Development projections at the top of the figure are multiplied by the input variables from the previous table to yield average weekday travel demand in the City of Boulder. (See Appendix A for further discussion of development projections included in Figure.) Trip generation rates and trip adjustment factors convert projected development into average weekday vehicle trips. For example, in the base year, single-family housing units will produce 131,495 weekday trips ($25,445 \times 8.22 \times 54\% = 112,945$). The same calculation is done for each land use type through 2030.

Figure 8. Projected Travel Demand Summary

Year->	<i>Base 2008</i>	<i>1 2009</i>	<i>2 2010</i>	<i>3 2011</i>	<i>4 2012</i>	<i>5 2013</i>	<i>22 2030</i>	<i>22-Year Increase</i>
CITY OF BOULDER DEMAND DATA								
SINGLE FAMILY HU	25,445	25,477	25,509	25,542	25,575	25,608	26,206	761
ALL OTHER HU	19,440	19,729	20,020	20,313	20,608	20,905	26,294	6,854
GOODS PRODUCTION KSF	16,090	16,230	16,360	16,500	16,640	16,780	19,330	3,240
RETAIL/RESTAURANT KSF	6,160	6,210	6,260	6,310	6,370	6,420	7,400	1,240
OTHER SERVICES KSF	25,820	26,030	26,250	26,470	26,690	26,920	31,010	5,190
<i>SF RES TRIPS</i>	112,945	113,087	113,231	113,375	113,520	113,667	116,325	3,380
<i>ALL OTHER RES TRIPS</i>	64,350	65,307	66,269	67,239	68,216	69,199	87,037	22,687
<i>GOODS PRODUCTION TRIPS</i>	39,903	40,250	40,573	40,920	41,267	41,614	47,938	8,035
<i>RETAIL/RESTAURANT TRIPS</i>	165,295	166,637	167,978	169,320	170,930	172,272	198,569	33,274
<i>OTHER SERVICES TRIPS</i>	89,983	90,715	91,481	92,248	93,015	93,816	108,070	18,087
<i>Total Vehicle Trips</i>	472,476	475,995	479,532	483,102	486,948	490,568	557,939	85,462

The cost of transportation improvements needed to accommodate new development through 2030 is shown at the top of Figure 9. For the Action Plan, the average cost is \$2,060 per additional vehicle trips anticipated through the year 2030. Improvements specified in the Vision Plan have an average cost of \$2,508 for each additional vehicle trip. The transportation excise tax by type of nonresidential development is shown below. To derive

the excise tax for each development category, multiply the trip generation rate by the trip adjustment factor and the capital cost per vehicle trip.

Figure 9. Transportation Excise Taxes for Nonresidential Development

		<i>Transportation Plan</i>		<i>Action</i>	<i>Vision</i>
				\$176,120,000	\$214,406,000
		Additional Vehicle Trips 2008-2030		85,462	85,462
		Capital Cost per Vehicle Trip		\$2,060	\$2,508
<i>ITE</i>		<i>Avg Weekday</i>	<i>Trip</i>	<i>Action Plan</i>	<i>Vision Plan</i>
<i>Code</i>		<i>Veh Trip Ends</i>	<i>Adjustment</i>	<i>Excise Tax</i>	<i>Excise Tax</i>
		<i>per 1,000 Sq Ft</i>	<i>Factors</i>	<i>per Sq Ft</i>	<i>per Sq Ft</i>
<i>Nonresidential (Based on Floor Area)</i>					
820	Retail / Restaurant	86.56	31%	\$55.27	\$67.29
770	Business Park	12.76	50%	\$13.14	\$16.00
710	Office	18.35	50%	\$18.90	\$23.01
610	Hospital	17.57	50%	\$18.09	\$22.03
520	School	14.49	33%	\$9.85	\$11.99
151	Mini-Warehouse	2.50	50%	\$2.57	\$3.13
150	Warehousing	4.96	50%	\$5.10	\$6.21
110	Light Industrial	6.97	50%	\$7.17	\$8.74
<i>Other Nonresidential</i>					
<i>Unique Demand Indicators</i>					
620	Nursing Home (per bed)	2.37	50%	\$2,441	\$2,971
565	Day Care (per student)	4.48	24%	\$2,214	\$2,696
320	Lodging (per room)	5.63	50%	\$5,798	\$7,060

The Institute of Transportation Engineers (ITE) publishes formulas for to derive average weekday vehicle trip ends based on the number of persons and vehicles available in residential development. Using year 2006 PUMS data, TischlerBise derived average persons and vehicles available by number of bedrooms, as shown in Figure 10.

Figure 10. Trip Generation Rates by Number of Bedrooms

	<i>Persons (1)</i>	<i>Trip Ends (2)</i>	<i>Vehicles Available (1)</i>	<i>Trip Ends (3)</i>	<i>Average Trip Ends</i>	<i>Households (1)</i>	<i>Trip Ends per Household</i>	<i>Recommended Trip Ends (4)</i>
SF 0-2 Bdrms	77	238	65	381	310	46	6.73	6.10
SF 3 Bdrms	248	690	192	1,113	902	109	8.27	7.50
SF 4 Bdrms	257	713	193	1,119	916	90	10.18	9.22
SF 5+ Bdrms	98	297	81	474	385	32	12.04	10.91
SF Subtotal	680	1,938	531	3,087	2,512	277	9.07	8.22
MF 0-1 Bdrm	81	248	58	522	385	71	5.42	5.24
MF 2+ Bdrms	192	629	121	770	699	100	6.99	6.76
MF Subtotal	273	876	179	1,292	1,084	171	6.34	6.13
GRAND TOTAL	953		710			448		

(1) 2006 American Community Survey, Public Use Microdata Sample for Colorado PUMA 00803 (unweighted data).

(2) Vehicle trips ends based on persons using formulas from Trip Generation (ITE 2003). For Single Family, fitted curve equation is $EXP(0.91 * LN(persons) + 1.52)$. For Multifamily, fitted curve equation is $(3.43 * persons) + 30.02$.

(3) Vehicle trip ends based on vehicles available using formulas from Trip Generation (ITE 2003). For Single Family, fitted curve equation is $EXP(0.99 * LN(vehicles) + 1.81)$. For Multifamily, fitted curve equation is $(3.94 * vehicles) + 293.58$.

(4) Recommended trip ends are scaled down to make the average trip ends by type of housing match the average trip generation rates derived from Census 2000 Summary File 3 data.

To derive number of vehicle trip ends by square feet of housing TischlerBise combined demographic data from the Census Bureau and house size data from the Boulder County Assessor's database. The number of bedrooms per housing unit was the common connection between the two databases.

Average floor area and number of trip ends by bedroom range are plotted in the chart below, with a logarithmic trend line derived from the averages by bedroom range in the City of Boulder. TischlerBise derived the estimated average number of trip ends and preliminary road impact fees by size of housing, using 100 square foot intervals. The input variables used to derive the transportation excise tax are discussed above. For single-family housing in the City of Boulder, TischlerBise recommends a minimum impact fee based on a unit size of 900 square feet and a maximum impact fee based on a unit size of 3,700 square feet.

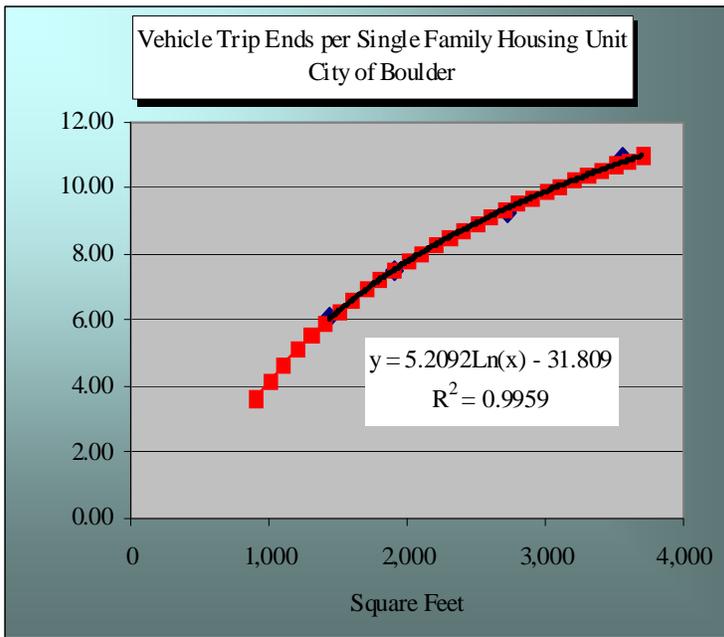
Figure 11. Transportation Excise Tax by Floor Area of Single Family Housing

Source: Average weekday vehicle trip ends by bedroom range from 2006 ACS PUMS. Finished square feet from Boulder County Assessor parcel database.

Residential Trip Adjustment Factor=> 54%
Capital Cost per Vehicle Trip=> \$2,060 \$2,508

Single Family Averages		
Bedrooms	Square Feet	Trip Ends
2 or less	1,428	6.10
3 bedrooms	1,903	7.50
4 bedrooms	2,724	9.22
5 or more	3,552	10.91

Square Feet	Vehicle Trip Ends	Action Plan	Vision Plan
900	3.63	\$4,033	\$4,910
1,000	4.17	\$4,644	\$5,654
1,100	4.67	\$5,196	\$6,326
1,200	5.12	\$5,700	\$6,940
1,300	5.54	\$6,164	\$7,505
1,400	5.93	\$6,593	\$8,027
1,500	6.29	\$6,993	\$8,514
1,600	6.62	\$7,367	\$8,969
1,700	6.94	\$7,718	\$9,397
1,800	7.24	\$8,050	\$9,800
1,900	7.52	\$8,363	\$10,182
2,000	7.79	\$8,660	\$10,544
2,100	8.04	\$8,943	\$10,888
2,200	8.28	\$9,213	\$11,216
2,300	8.51	\$9,470	\$11,530
2,400	8.74	\$9,717	\$11,830
2,500	8.95	\$9,953	\$12,118
2,600	9.15	\$10,181	\$12,395
2,700	9.35	\$10,399	\$12,661
2,800	9.54	\$10,610	\$12,918
2,900	9.72	\$10,813	\$13,165
3,000	9.90	\$11,010	\$13,404
3,100	10.07	\$11,200	\$13,636
3,200	10.23	\$11,384	\$13,860
3,300	10.39	\$11,562	\$14,077
3,400	10.55	\$11,735	\$14,287
3,500	10.70	\$11,903	\$14,492
3,600	10.85	\$12,066	\$14,691
3,700	10.99	\$12,225	\$14,884



TischlerBise also used American Community Survey 2006 PUMS data for Boulder to determine average weekday vehicle trips by size of multifamily housing. In contrast to the analysis of single family units, multifamily units are more uniform regarding floor area, with a limited number of units with three or more bedrooms. To avoid sample size problems, TischlerBise derived average floor area and trip generation for two bedroom ranges (0-1 bedroom and 2+ bedrooms) as shown in Figure 12. A linear formula was derived for the two bedroom ranges to derive trip generation rates in 100-foot intervals.

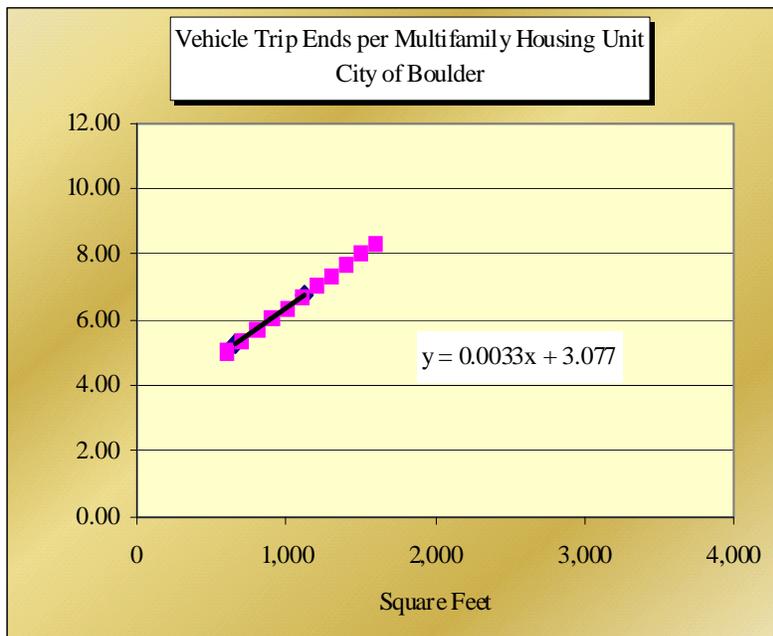
Figure 12. Transportation Excise Tax by Floor Area of Multifamily Housing

Source: Average weekday vehicle trip ends by bedroom range from 2006 ACS PUMS. Finished square feet from Boulder County Assessor parcel database.

Residential Trip Adjustment Factor=> 54%
Capital Cost per Vehicle Trip=> \$2,060 \$2,508

Averages for Multifamily Housing		
Bedrooms	Square Feet	Trip Ends
1 or less	656	5.24
2 or more	1,117	6.76

Square Feet	Vehicle Trip Ends	Action Plan	Vision Plan
600	5.06	\$5,625	\$6,848
700	5.39	\$5,992	\$7,295
800	5.72	\$6,359	\$7,742
900	6.05	\$6,726	\$8,189
1,000	6.38	\$7,093	\$8,636
1,100	6.71	\$7,460	\$9,083
1,200	7.04	\$7,827	\$9,530
1,300	7.37	\$8,195	\$9,977
1,400	7.70	\$8,562	\$10,424
1,500	8.03	\$8,929	\$10,871
1,600	8.36	\$9,296	\$11,318



AFFORDABLE HOUSING EXCISE TAX

Residential and nonresidential development in the City of Boulder currently pays a Housing Excise Tax (HET) to help provide permanent affordable housing in the City. As part of the Impact Fee/Excise Tax Study, TischlerBise was asked to calculate an impact fee or excise tax for Affordable Housing. Due to limitations in the State Impact Fee Act and impact fee case law, TischlerBise recommends an excise tax for Affordable Housing. If this Development Excise Tax is approved by the voters, the current HET should be repealed.

The City's current adopted goal for provision of permanent affordable housing is 10 percent of the City's housing stock. The breakdown of units by income category is 35 percent of units for very low-income households (<30% of Area Median Income (AMI)); 40 percent for low-income households (30-68% AMI) and 25 percent for moderate income households (69-80% AMI). The City's current inventory of approximately 2,800 permanently affordable units is short by approximately 1,700 units. The City will continue to pursue adding these units to the inventory to meet the current need through a variety of means such as funding, policies and planning, direct services, and asset management.¹

- Funding is currently from a variety of grants and loans—approximately \$3.5-4.5 million annually—provided to non-profit and for-profit agencies and housing developers. Public investment is used toward acquisition, rehabilitation, and/or new construction of permanently affordable rental or for-sale housing. Funding and financing sources include locally-controlled funds such as Affordable Housing Funds (from the General Fund and Cash-in-Lieu); Community Housing Assistance Program (CHAP); property tax dedicated mill levy; Housing Excise Tax; CDBG (federal funds); HOME (federal funds); and Private Activity Bonds (tax-exempt bond allocation that may be used to finance affordable housing). State and Federal funds and financing are available as well.
- Policies and Planning: Design, development and implementation of policies that increase affordable housing inventory. Planning efforts focus on identification of future housing needs and mechanisms to address them. Planning staff also implements the city's Inclusionary Zoning Ordinance, which requires that at least 20 percent of new residential development is committed as permanently affordable.

¹ Discussion below from, *City of Boulder Affordable Housing Report, February 2008*.

If the City were to stop growing today, the affordable housing goal would still be pursued through the above means. However, the City will not stop growing and additional units will be required to meet the needs of future development. To meet the City's future affordable housing needs, TischlerBise recommends implementation of a development excise tax for affordable housing, paid only by nonresidential development. Nonresidential development should pay the affordable housing excise tax because employment is the most direct generator of affordable housing needs. The recommended DET component uses a plan-based methodology driven by the City's adopted goal for affordable housing and the average cost to the City to subsidize the provision of affordable units.

It should be noted, that impact fees or development excise taxes on new residential development can be waived for affordable units. If the City were to adopt impact fees, the amount waived or foregone would have to be covered through other means (such as from the General Fund) to make each impact fee account whole. This should be addressed in the ordinance that adopts the fee. Without this waiver, the proposed impact fees will add to the cost of an affordable housing unit.

Furthermore, the consultant recommends that the existing dedicated property tax for housing and other existing funding sources be used to correct the existing deficiency in LOS and cover housing-related operating costs. With this funding strategy, Boulder will be able to correct the existing deficiency in affordable housing with property tax revenue and other means such as inclusionary zoning, while meeting its future growth-related affordable housing needs through the updated development excise tax.

Nonresidential development will be assessed the tax per square foot of gross floor area, or based on unique demand indicators, such as the number of rooms in a hotel. The tax rate is derived by multiplying the affordable housing cost per employee by the number of employees per demand indicator.

Figure 13 summarizes the demand for affordable housing units through 2030. The current employment base of 97,750 jobs is projected to increase to 117,400 jobs by 2030. Residential development is projected to increase by 7,500 units. Assuming the City's current target of 10 percent as permanently affordable, an additional 750 units are needed to accommodate future affordable housing needs brought about by nonresidential development in the City. The 750 units are further broken down by income category, per the City's targets at 35 percent for very low income, 40 percent for low income, and 25 percent for moderate income. The projected net increase of 19,650 jobs is used as the denominator in the LOS calculation for affordable housing.

Figure 13. Affordable Housing Demand

<i>Demand Units</i>	<i>Base Year</i> 2008	<i>2030</i> <i>Projection</i>	<i>Net</i> <i>Increase</i>
Jobs in Boulder	97,750	117,400	19,650
Housing Units*	45,000	52,500	7,500
<i>10% Permanently Affordable HU Goal</i>			<i>750</i>
<i>% of Aff. Units**</i>			
35% Very Low Income Aff. Units (<30% AMI)			262
40% Low Income Aff. Units (30-68% AMI)			300
25% Moderate Income Aff. Units (69-80% AMI)			187
TOTAL			<u>750</u>

* Current affordable housing goal is based on 45,000 total housing units, therefore this is base year figure.

** City of Boulder adopted targets.

Figure 14 provides detail on total subsidy required for each affordable housing unit income category and the City's estimated share of the subsidy. Income levels and affordable prices are from 2008 housing data, provided by City staff. City subsidy estimates were provided by City of Boulder staff based on recent practice. The City share of the subsidy is the basis for the excise tax calculation. However, it should be noted that staff notes that the external sources of subsidy that are used to leverage financing—namely Federal funds, foundation money, donations to non-profits, tax credits, etc.—are not anticipated to increase to meet additional future demand generated by new nonresidential development. If this is the case and the City share increases commensurately, the methodology used to calculate the Affordable Housing excise tax, which is based on current practice, may not fully cover future costs. This should be monitored for potential refinement in future updates.

Figure 14. Affordable Housing Costs / Subsidy Requirement

	<i>Median Income</i>	<i>Moderate Income</i>	<i>Low Income</i>	<i>Very Low Income</i>
<i>% of AMI (range) —></i>	100%	69-80%	30-68%	<30%
<i>% of AMI (assumption) —></i>		75.7%	50.0%	30%
Assumed Income for Household Size*	\$78,300	\$59,265	\$39,150	\$23,500
Affordable Price of Attached Unit**	\$220,600	\$156,700	\$89,078	\$36,500
Median Price of Attached Unit**	\$250,000	\$250,000	\$250,000	\$250,000
Total Subsidy Required	\$29,400	\$93,300	\$160,922	\$213,500
City Share of Subsidy***	\$0	\$50,000	\$60,000	\$70,000

* City of Boulder, 2008 Housing and Income Data; assume 3-person household

** City of Boulder, 2008 Housing and Income Data; assumes Attached Unit

*** City of Boulder

The City’s total share of the cost to provide permanently affordable housing due to new nonresidential development between 2008 and 2030 is estimated to be approximately \$45.8 million. The estimated cost was derived from the projected increase in the need for affordable units and the current estimated City subsidy per unit. Based on the projected increase in employment from 2008 to 2030 of 19,650, the cost per job is \$2,328. Detail is provided in Figure 15.

Figure 15. Projected Future Affordable Housing Costs

<i>Cost of Affordable Housing</i>	<i>City Cost per Unit*</i>	<i>Affordable Units</i>	<i>Total Need**</i>
Very Low Income Aff. Units (<30% AMI)	\$70,000	262	\$18,375,000
Low Income Aff. Units (30-68% AMI)	\$60,000	300	\$18,000,000
Moderate Income Aff. Units (69-80% AMI)	\$50,000	187	\$9,375,000
TOTAL			\$45,750,000
Net Increase in Jobs (2008 thru Buildout)			19,650
Net City Cost per Additional Job in Boulder			\$2,328

* See "Subsidy Requirement"; represents the estimated City share of gap between median price and affordable price for attached units

** Based on net increase in affordable unit needs by income category multiplied by estimated City share of subsidy required.

To derive the affordable housing development excise tax per square foot, the City cost per job is multiplied by the number of employees per demand unit. For example for retail establishments, the cost per job of \$2,328 is multiplied by 2.86 employees per 1,000 square feet and divided by 1,000 ($\$2,328 \times 2.86 / 1,000 = \6.65 per square foot). As shown in Figure 16, the resulting affordable housing excise tax for office development is 19 times the City’s current adopted tax rate of \$0.49 per square foot of nonresidential development.

Figure 16. Affordable Housing Development Excise Tax Calculation

<u>Level Of Service</u>	<u>Per Employee</u>
Affordable Housing City Cost per Job	\$2,328

<i>ITE Code</i>	<i>Employees Per 1,000 Sq Ft</i>	<i>Excise Tax per Sq Ft</i>	
<u>Nonresidential (Floor Area)</u>			
820	Retail / Restaurant	2.86	\$6.65
770	Business Park	3.16	\$7.35
710	Office	3.91	\$9.10
610	Hospital	3.38	\$7.86
520	School	0.92	\$2.14
151	Mini-Warehouse	0.04	\$0.09
150	Warehousing	1.28	\$2.97
110	Light Industrial	2.31	\$5.37
			<i>Excise Tax per Demand Indicator</i>
<u>Other Nonresidential</u>			
620	Nursing Home (per bed)	0.36	\$838
565	Day Care (per student)	0.16	\$372
320	Lodging (per room)	0.44	\$1,024

VEHICLES AND EQUIPMENT EXCISE TAX

A new excise tax for Vehicles and Equipment may be used to expand the City's fleet to maintain the current infrastructure standard. This excise tax uses the same calculation steps as the impact fee for Municipal Facilities, with both residential and nonresidential development paying the cost of additional vehicles and equipment. As shown in Figure 17, the total value of Boulder's fleet (~\$24.7 million excluding fire apparatus that will be funded with fire impact fees) was allocated 72% to residential development and 28% to nonresidential development. This cost allocation is based on Boulder's functional population that accounts for residents and jobs, with adjustments for commuting patterns. The current count of vehicles and equipment by class, along with the average purchase price for each class, were provided by City staff.

Figure 17. Current Standards for Vehicles and Equipment

Class	Count	Description	Average Purchase Cost	TOTAL by Class
MA-100	14	SEDAN FULL SIZE NON-PATROL	\$28,877	\$404,278
MA-150	24	SEDAN COMPACT	\$21,614	\$518,736
MA-200	43	SEDAN POLICE PATROL	\$35,623	\$1,531,789
MA-300	73	TRUCK 1/2 TON AND 3/4 TON	\$30,867	\$2,253,291
MA-315	55	COMPACT PICKUP	\$23,376	\$1,285,680
MA-320	65	SPORT UTILITY	\$31,053	\$2,018,445
MA-325	15	FULL SIZE VAN	\$47,719	\$715,785
MA-350	17	MINI VAN	\$24,431	\$415,327
MA-400	39	TRUCK-1 TON	\$36,738	\$1,432,782
MA-401	5	TRUCK 1 TON DIESEL	\$39,110	\$195,550
MA-425	1	TRUCK-14500 GVWR GAS	\$26,559	\$26,559
MA-500	14	TRUCK-15K-19K GVWR	\$67,751	\$948,514
MA-600	9	TRUCK-20K-39K GVWR	\$125,611	\$1,130,499
MA-625	19	TRUCK-40K+ GVWR	\$133,414	\$2,534,866
MA-650	5	STREET SWEEPERS	\$156,384	\$781,920
MA-675	6	TRUCK-SEWER MAINTENANCE	\$131,249	\$787,494
MA-700	50	OFF ROAD/EARTH MOVING HVY DTY	\$51,313	\$2,565,650
MA-701	2	OFF ROAD/EARTH MOVING LT DTY	\$33,657	\$67,314
MA-800	153	MISC EQUIP W/METER W/ENGINE	\$15,874	\$2,428,722
MA-900	290	MISC EQUIP W/O METER W/ENGINE	\$8,071	\$2,340,590
MA-901	38	MISC EQUIP W/O METER W/O ENGIN	\$8,916	\$338,808
TOTAL	937			\$24,722,599

Weighted Average Cost per Unit => \$26,000

	Proportionate Share	2008 Demand Units	Cost per Demand Unit
Residential	72%	103,100 Population	\$170.13
Nonresidential	28%	97,750 Jobs	\$69.78

6.54 items per 1,000 persons

2.68 items per 1,000 jobs

Source: City of Boulder fleet database.

The current infrastructure standard for vehicles and equipment is an average expenditure of \$107.13 for each resident of Boulder. Excise taxes for both Single Family and Multifamily housing are shown in Figure 18. The excise tax amount is based on the average number of persons, by unit size, and the capital cost per person for vehicles and equipment. Appendix A provides documentation on the average number of persons by type and size of housing.

Figure 18. Vehicle and Equipment Excise Tax for Residential Development

<i>Level Of Service</i>	<u>Per Person</u>
Vehicles and Equipment Cost	\$170.13

<i>Square Feet</i> <i>(finished floor area)</i>	<i>Persons per Housing Unit</i>		<i>Excise Tax per Housing Unit</i>	
	<i>Single Family</i> <i>(SFD, SFA & MH)</i>	<i>Multifamily</i> <i>(all other types)</i>	<i>Single Family</i> <i>(SFD, SFA & MH)</i>	<i>Multifamily</i> <i>(all other types)</i>
Wt Avg	2.30	1.60	\$391	\$272
600	1.00	1.06	\$170	\$179
700	1.00	1.28	\$170	\$217
800	1.00	1.47	\$170	\$250
900	1.00	1.64	\$170	\$279
1,000	1.16	1.79	\$197	\$305
1,100	1.30	1.93	\$221	\$328
1,200	1.43	2.06	\$243	\$350
1,300	1.55	2.17	\$263	\$369
1,400	1.66	2.28	\$281	\$387
1,500	1.76	2.38	\$299	\$404
1,600	1.85	2.47	\$315	\$420
1,700	1.94		\$330	
1,800	2.03		\$344	
1,900	2.11		\$358	
2,000	2.18		\$371	
2,100	2.25		\$383	
2,200	2.32		\$395	
2,300	2.39		\$406	
2,400	2.45		\$416	
2,500	2.51		\$427	
2,600	2.57		\$436	
2,700	2.62		\$446	
2,800	2.68		\$455	
2,900	2.73		\$464	
3,000	2.78		\$472	
3,100	2.83		\$481	
3,200	2.87		\$489	
3,300	2.92		\$496	
3,400	2.96		\$504	
3,500	3.01		\$511	
3,600	3.05		\$518	
3,700	3.09		\$525	

Figure 19 indicates the vehicle and equipment excise tax for nonresidential development. The excise tax is derived from the average number of employees per demand unit and the capital cost per employee. Appendix A provides documentation on the ratio of jobs to nonresidential demand units (i.e. floor area or unique indicators such as rooms in a hotel).

Figure 19. Vehicle and Equipment Excise Tax for Nonresidential Development

<i>Level Of Service</i>		<i>Per Employee</i>	
Vehicles and Equipment Cost		\$69.78	
<i>ITE Code</i>		<i>Employees per 1,000 Square Feet</i>	<i>Excise Tax per Square Foot</i>
<i>Nonresidential (Floor Area)</i>			
820	Retail / Restaurant	2.86	\$0.19
770	Business Park	3.16	\$0.22
710	Office	3.91	\$0.27
610	Hospital	3.38	\$0.23
520	School	0.92	\$0.06
151	Mini-Warehouse	0.04	\$0.00
150	Warehousing	1.28	\$0.08
110	Light Industrial	2.31	\$0.16
<i>Other Nonresidential</i>			
		<i>Excise Tax per Demand Indicator</i>	
620	Nursing Home (per bed)	0.36	\$25
565	Day Care (per student)	0.16	\$11
320	Lodging (per room)	0.44	\$30

PARK LAND EXCISE TAX

The City of Boulder has a high level of service for park land. Boulder's 2006 Parks Master Plan documents numerous undeveloped park sites (see page 20). On page 23, the Plan concludes park acreage "meets the guidelines for Boulder's projected population at build-out." Consistent with this finding, the Park Land excise tax is derived using the current inventory of park and recreation sites and projected population in 2030 (i.e. a buy-in approach). This funding strategy is consistent with the development impact fee for parks and recreation, which excludes the cost of land.

Figure 20 itemizes Boulder's current inventory of park and recreation sites. With 1,631 acres of land and an estimated cost factor of \$134,000 per acre, Boulder has already invested approximately \$1,844 for each resident expected by the year 2030. The land cost factor (approximately \$3 per square foot) is the weighted average cost of three recent acquisitions by the City of Boulder (i.e., Elks, Mesa, and Valmont Parks purchased between 1999 and 2003).

Figure 20. Infrastructure Standard for Park Land

Site Name	Acres	General Use	Location
BOULDER RESERVOIR	390.0	Natural Lands	51st St., N. of Jay Rd.
AREA III	186.0	Natural Lands / Undeveloped	N. 26th St.
FLATIRONS GOLF COURSE	127.0	Golf Course	5706 Arapahoe
VALMONT CITY PARK	126.0	Park / Dog Park	Valmont Rd. & Airport Rd.
NATURAL AREA / HABITAT	118.0	Natural Lands	N. 51st St.
BOULDER RESERVOIR REC AREA	67.0	Marina, Beach	51st St., N. of Jay Rd.
FOOTHILLS COMMUNITY	65.5	Park / Office/Maintenance	800 Cherry Ave.
COOT LAKE	65.0	Park / Natural Lands	5600 63rd St.
EAST BOULDER COMMUNITY PARK	53.6	Park / Dog Park	5660 Sioux Dr.
PLEASANT VIEW FIELDS	52.0	Athletic Fields	3805 47th St.
HARLOW PLATTS COMMUNITY PARK	50.5	Park / Lake	Gillespie, S. of Grinnell
GERALD STAZIO BALLFIELDS	42.0	Athletic Fields	2445 Stazio
TOM WATSON	31.0	Park/Courts/Ballfields	6180 N. 63rd St.
EATON	28.5	Park / Natural Lands	E. end of Nautilus Ct.
SCOTT CARPENTER PARK/POOL	16.8	Park / Pool	30th & Arapahoe
TANTRA	16.8	Park	46th & Hanover
CHAUTAUQUA	14.8	Park	900 Baseline Rd.
NORTH BOULDER	12.5	Park	9th & Dellwood
PARK EAST	11.3	Greenway / Park	Aurora & Mohawk
MAXWELL LAKE	8.6	Undeveloped Park	Linden Park Dr. N. of Linden
MARTIN	8.3	Park	36th & Eastman
AURORA 7	7.9	Park	38th & Aurora
ELKS	7.9	Park	3995 N. 28th
CRESTVIEW	7.7	Park	17th & Sumac Ave.
EAST MAPLETON BALLFIELDS	7.6	Athletic Fields	30th & Mapleton
HOWARD HEUSTON	7.5	Park / Dog Park	34th St., S. of Iris Ave.
CENTRAL MUNICIPAL COMPLEX	7.4	Park / City Offices	Canyon & Broadway Ave.
VIOLET	7.3	Undeveloped	17th & Violet Ave.
EBEN G. FINE	7.0	Park	3rd & Arapahoe Ave.
BEAR CREEK	6.6	Park	Lehigh & Table Mesa
WEST HIGHLAND	6.5	Park	W. end of Dartmouth
BURKE	6.0	Park	Mohawk & Pawnee
CENTRAL PARK	5.5	Park / Bandshell	13th & Canyon Blvd.
PARKSIDE	5.5	Park	26th & Kalmia Ave.
N BOULDER REC CENTER / OLMSTED	5.2	Rec Center / Park	Broadway Ave. & Forest
HEATHERWOOD	5.0	Undeveloped Park	Heatherwood, E. of 75th
ARAPAHOE RIDGE	4.6	Park	Eisenhower Dr., S. of Arapahoe
KEEWAYDIN MEADOWS	4.5	Park	Manhattan & Sioux
CHRISTIANSSEN	4.4	Park	3100 Kings Ridge Blvd.
SHANAHAN RIDGE	4.4	Park	Lehigh & Greenbriar
COLUMBINE	4.3	Park	23rd & Glenwood
ELMERS TWO MILE	4.0	Park	2700 Iris Ave.
PALO EAST	4.0	Park	Corriente Pl. & Campo Ct.
MEADOW GLEN	2.5	Park	Pennsylvania Ave., E. of 55th
PARK OPERATIONS FACILITY	2.0	Office / Maintenance	E. end of Old Pearl St.
ADM OFFICES / IRIS CENTER	1.4	Main Dept Offices	3198 N. Broadway Ave.
EAST BOULDER COMMUNITY CENTER	1.1	Recreation Center	5660 Sioux Dr.
TANTRA MAINTENANCE FACILITY	1.0	Office / Maintenance	Tantra Dr.
SPRUCE POOL	0.8	Pool	21st & Spruce
S BOULDER RECREATION CENTER	0.6	Recreation Center	1360 Gillespie
Total Acres	1,631.4	Population in 2030	118,500
Land Cost per Acre	\$134,000	Park Land Cost per Person	\$1,844

Park Land excise taxes, by type and size of residential unit, are shown in Figure 21. The cost per person for park land, multiplied by the average number of persons per housing unit, yields the excise tax amount. Documentation on the average number of persons by finished floor area is provided in Appendix A.

Figure 21. Excise Tax Schedule for Park Land

<i>Level Of Service Standard</i>	<u>Per Person</u>
Park Land Cost	\$1,844

<i>Square Feet</i> (finished floor area)	<i>Persons per Housing Unit</i>		<i>Excise Tax per Housing Unit</i>	
	<i>Single Family</i> (SFD, SFA & MH)	<i>All Other</i> <i>Types</i>	<i>Single Family</i> (SFD, SFA & MH)	<i>All Other</i> <i>Types</i>
Wt Avg	2.30	1.60	\$4,241	\$2,950
600	1.00	1.06	\$1,844	\$1,949
700	1.00	1.28	\$1,844	\$2,359
800	1.00	1.47	\$1,844	\$2,714
900	1.00	1.64	\$1,844	\$3,028
1,000	1.16	1.79	\$2,138	\$3,308
1,100	1.30	1.93	\$2,397	\$3,562
1,200	1.43	2.06	\$2,634	\$3,794
1,300	1.55	2.17	\$2,852	\$4,007
1,400	1.66	2.28	\$3,053	\$4,204
1,500	1.76	2.38	\$3,241	\$4,388
1,600	1.85	2.47	\$3,416	\$4,560
1,700	1.94		\$3,581	
1,800	2.03		\$3,736	
1,900	2.11		\$3,883	
2,000	2.18		\$4,023	
2,100	2.25		\$4,155	
2,200	2.32		\$4,282	
2,300	2.39		\$4,403	
2,400	2.45		\$4,518	
2,500	2.51		\$4,629	
2,600	2.57		\$4,736	
2,700	2.62		\$4,838	
2,800	2.68		\$4,937	
2,900	2.73		\$5,033	
3,000	2.78		\$5,125	
3,100	2.83		\$5,214	
3,200	2.87		\$5,300	
3,300	2.92		\$5,384	
3,400	2.96		\$5,465	
3,500	3.01		\$5,544	
3,600	3.05		\$5,621	
3,700	3.09		\$5,695	

IMPLEMENTATION AND ADMINISTRATION

All costs in the development excise tax calculations are given in current dollars with no assumed inflation rate over time. Necessary cost adjustments can be made as part of the recommended annual evaluation and update of the tax amounts. One approach is to adjust for inflation in construction costs by means of an index specific to construction as opposed to the consumer price index (CPI), which is more general in nature. TischlerBise recommends using the Marshall Swift Valuation Service, which provides comparative cost multipliers for various geographies and types of construction. The multipliers can be applied against the calculated excise tax amounts. If cost estimates change significantly the City should redo the calculations.

It is recommended that the excise taxes be collected at the time of building permit. Revenue from excise taxes does not typically have to be earmarked or accounted for separately from the City's general revenue and does not have to specifically benefit new growth.

APPENDIX A. DEMOGRAPHIC DATA

In this Appendix, TischlerBise documents the demographic data and development projections used in the Impact Fee / Development Excise Tax study for the City of Boulder. Although long-range projections are necessary for planning capital improvements, a shorter time frame of five years is critical for the impact fees analysis. Infrastructure standards are calibrated using 2008 data and the first projection year for the cash flow model will be 2009. The City of Boulder's fiscal year begins January 1st.

POPULATION AND HOUSING CHARACTERISTICS

TischlerBise recommends the use of two residential categories in the impact fee calculations: 1) Single Family (detached and attached) and 2) All Other housing types. Differentiating impact fees by type of housing helps make the fees proportionate to the demand for public facilities. Single Family housing units are normally larger and have more persons than All Other housing types. According to the U.S. Census Bureau's American Community Survey data for 2006, Single Family housing in Boulder averages 2.3 persons per unit (see the rows with yellow shading in Figure A1). All Other housing averages 1.6 persons per unit (see the rows with tan shading in the table below).

Impact fees often use per capita standards and persons per housing unit or persons per household to derive proportionate-share fee amounts. When persons per housing unit multipliers are used in the fee calculations, infrastructure standards are derived using year-round population. When persons per household multipliers are used in the fee calculations, the impact fee methodology assumes all housing units will be occupied, thus requiring seasonal or peak population to be used when deriving infrastructure standards. In the City of Boulder impact fee will be derived using year-round population and the average number of persons per housing unit.

Figure A1. Persons per Housing Unit

<i>House Type Demographics</i>				<i>Housing</i>	<i>Persons Per</i>	
	<i>Persons</i>	<i>Hshlds</i>	<i>PPH</i>	<i>Units</i>	<i>Housing Unit</i>	<i>Hsg Mix</i>
Single Family (SFD, SFA & MH)	54,948	21,776	2.52	23,678	2.3	57%
All Other Types	28,671	16,097	1.78	17,651	1.6	43%
Group Quarters	8,855					
Total	92,474	37,873		41,329		

Source: U.S. Census Bureau, 2006 American Community Survey.

AVERAGE NUMBER OF PERSONS BY SIZE OF HOUSING UNIT

To derive impact fees by floor area of housing requires a linkage of demographic data from the U.S. Census Bureau and house size data from the Boulder County Assessor, with number of bedrooms as the common connection between the two databases. Number of persons by bedroom range may be determined from survey data provided by the U.S. Census Bureau. The City of Boulder is in Public Use Microdata Area (PUMA) 00803. PUMAs are areas of roughly 100,000 persons for which the Census Bureau makes available a 5% sample of responses to the long-form census questionnaire. TischlerBise used this data to prepare persons per housing unit multipliers that vary by type of housing and number of bedrooms. Because the number of persons increases with the number of bedrooms, this approach may be used to make impact fees more “progressive” with higher impact fees imposed on larger housing units and lower impact fees on smaller, more affordable housing.

The tables below indicate persons per housing unit by type of housing and number of bedrooms. Results for Single Family housing are shown in Figure A2, with Figure A3 indicating average persons by bedroom range for All Other housing types. To minimize sample size problems, TischlerBise aggregated bedroom ranges.

Figure A2. Persons per Single Family Housing Unit by Bedroom Range

Single Family Dwellings
Boulder, Colorado

	<i>0-2 Bdrms</i>	<i>3 Bdrms</i>	<i>4 Bdrms</i>	<i>5+ Bdrms</i>	<i>Wt Avg</i>
Single Family	1.63	2.15	2.73	2.95	2.32

Source: Data for Colorado PUMA 00803 (includes SFD, SFA and MH)
2006 American Community Survey, Public Use Microdata Sample.

Figure A3. Average Persons by Bedroom Range for All Other Housing Types

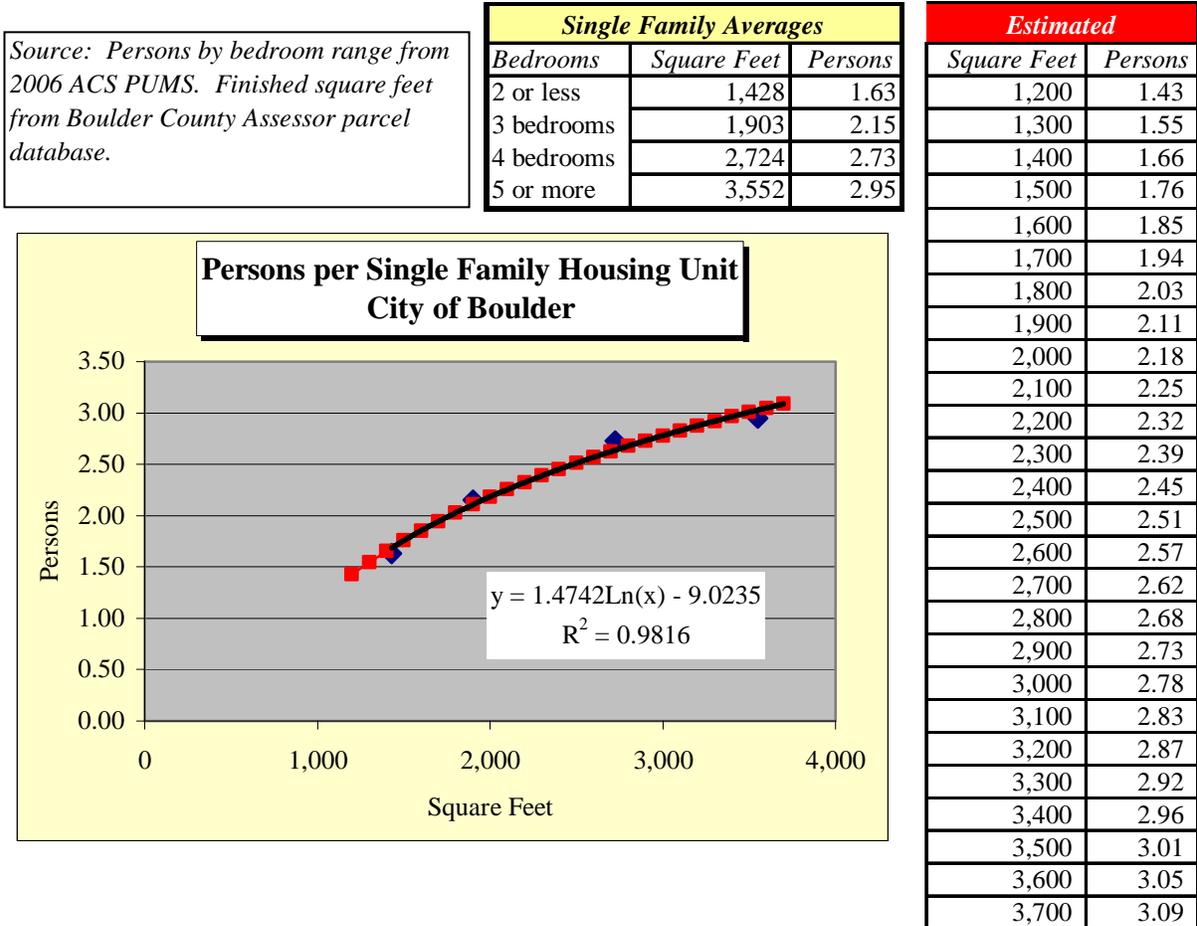
All Other Dwellings
Boulder, Colorado

	0-1 Bdrm	2 Bdrms	3+ Bdrms	Wt Avg
2+ Units per Structure	1.20	1.79	2.46	1.62

*Source: Data for Colorado PUMA 00803 (all other housing types)
2006 American Community Survey, Public Use Microdata Sample.*

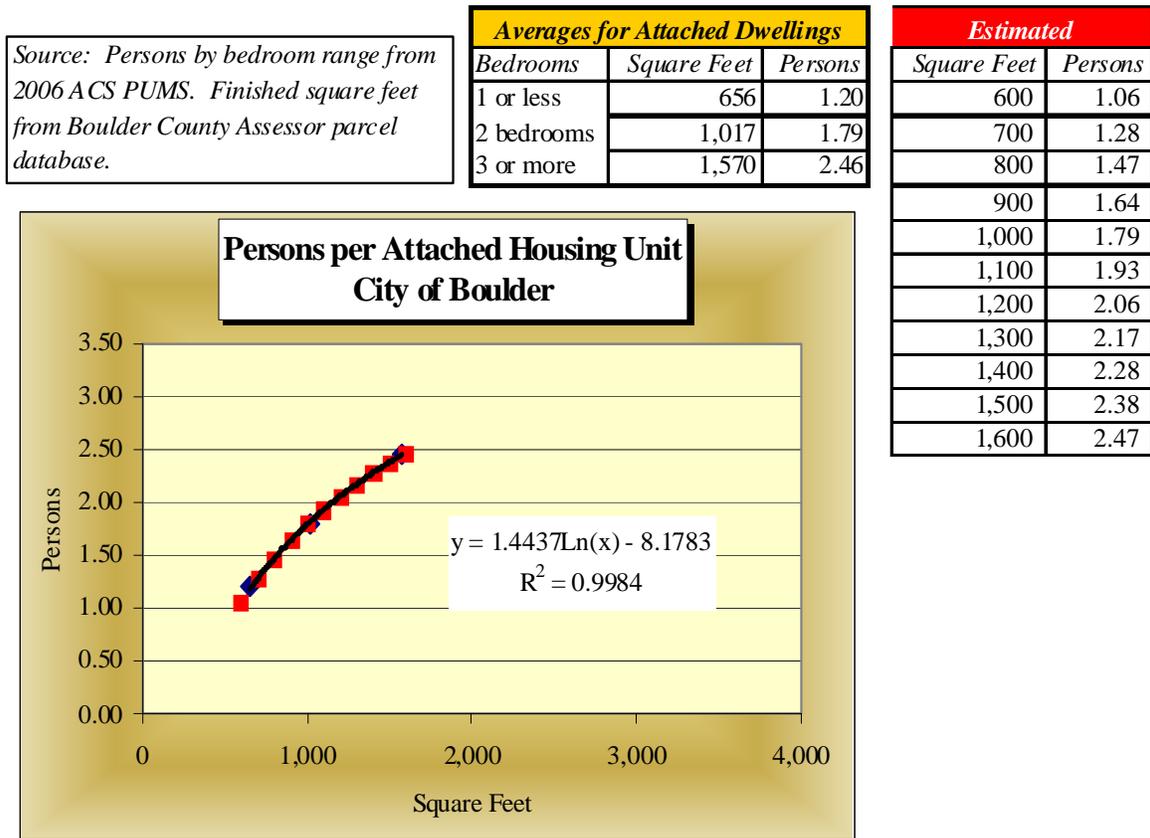
Using key variables from the County Assessor's parcel database, TischlerBise determined the average finished floor area by type of housing and bedroom range. For Single Family housing, average floor area and number of persons by bedroom range are plotted in Figure A4, with a logarithmic trend line derived from the four actual averages in the City of Boulder. Using the trend line formula shown in the chart, TischlerBise derived the estimated average number of persons by size of Single Family housing, using 100 square foot intervals. For the purpose of impact fees in City of Boulder if the City wishes to assess fees by size of unit, TischlerBise recommends a minimum fee based on a Single Family unit size of 1,200 square feet and a maximum fee based on a Single Family unit size of 3,700 square feet of finished floor area.

Figure A4. Average Persons by Floor Area of Single Family Housing



For All Other housing types, the average floor area and number of persons by bedroom range are plotted in Figure A5. A logarithmic trend line was determined from the three actual averages in the City of Boulder. Using the trend line formula shown in the chart, TischlerBise derived the estimated average number of persons by unit size, using 100 square feet intervals. For All Other housing types, TischlerBise recommends a minimum fee based on a unit size of 600 square feet and a maximum fee based on a unit size of 1,600 square feet of finished floor area, if the City wishes to assess fees by size of unit.

Figure A5. Average Persons by Floor Area of Attached Housing



RECENT RESIDENTIAL CONSTRUCTION

Figure A6 indicates City of Boulder 2006 estimates for year-round residents and housing units. From 2000 to 2006, Boulder added an average of 308 housing units per year. The chart at the bottom of Figure A6 indicates the estimated number of housing units added by decade in City of Boulder. If the recent rate of housing construction continues, the first decade of the

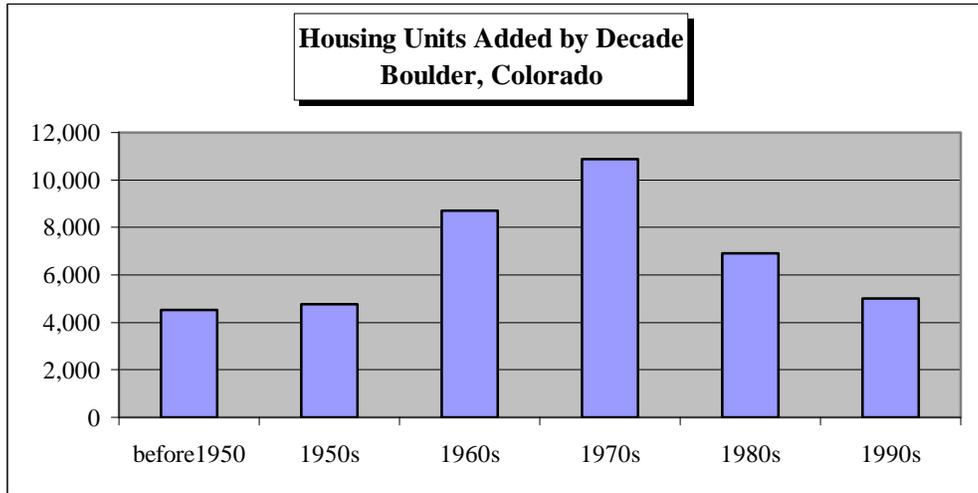
21st century will experience an increase of approximately 3,000 housing units, which is less than the number of housing units added during the 90s.

Figure A6. City of Boulder Housing Units and Population in 2006

Boulder, Colorado	
Estimated Population in 2006*	101,918
Housing Units 2000*	42,740
<i>New Housing Units 2000-2006</i>	<i>1,848</i>
Housing Units in 2006*	44,588

From 2000 to 2006, Boulder added approximately 308 housing units per year.

* City of Boulder estimates.



Source: Units by decade based on Table H34, SF3 Census 2000, U.S. Census Bureau.

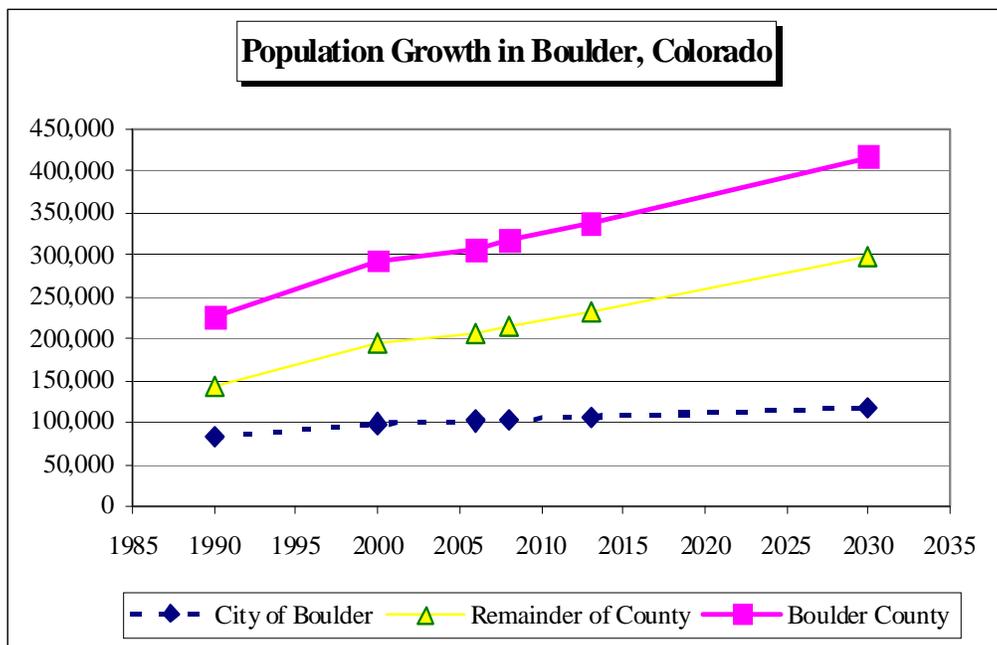
POPULATION PROJECTIONS

The impact fee study will use population and job projections as the key growth indicators, from which housing unit and nonresidential floor area data will be derived. According to the City’s 2008 Community Data Report, Boulder will be home to 118,500 residents by the year 2030 (Area I only). In that same year, Boulder County is expected to have a population of 417,517 (Woods & Poole Economics 2007). As shown in Figure A7, Boulder’s population share is expected to decrease from 33% of total county population in 2006, to 28% by the year 2030.

Figure A7. Population Growth in Boulder

	<i>1990</i>	<i>2000</i>	<i>2006</i>	<i>2008</i>	<i>2013</i>	<i>2030</i>
Boulder County	226,374	293,878	308,110	317,358	338,739	417,517
City of Boulder	83,312	99,093	101,918	103,100	106,414	118,500
Remainder of County	143,062	194,785	206,192	214,258	232,325	299,017
City of Boulder Share	37%	34%	33%	32%	31%	28%

Source: Boulder County from Woods & Poole Economics (2007). City of Boulder 1990 from U.S. Census Bureau; 2000 and 2006 estimates from City of Boulder. City of Boulder 2008 and 2030 (Area I) from 2008 Community Data Report.



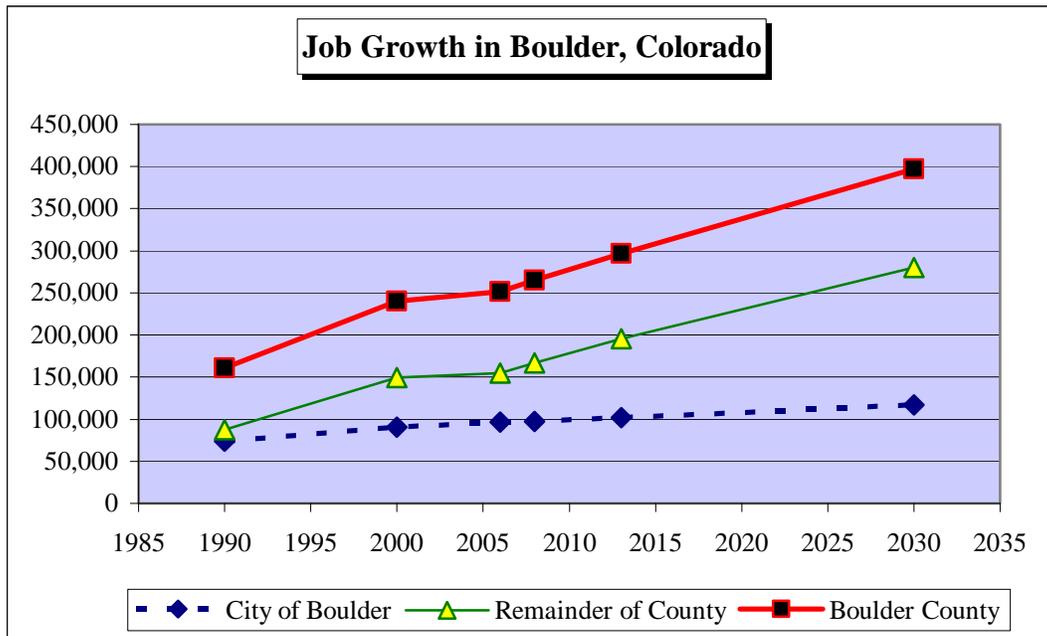
JOBS BY PLACE OF WORK

In addition to data on residential development, the calculation of impact fees requires data on nonresidential development. TischlerBise uses the term “jobs” to refer to employment by place of work. Similar to the above population share discussion, Boulder’s capture ratio of countywide jobs is shown in Figure A8. Boulder County job data were obtained from Woods & Poole Economics, Inc. (2007). Estimated jobs within the City of Boulder, in both 1990 and 2000, are from the Census Transportation Planning Package. Job projections from the 2008 Community Data Report indicate Boulder’s capture ratio decreases from 39% of countywide jobs in 2006 to 30% by the year 2030.

Figure A8. Job Growth in Boulder

	1990	2000	2006	2008	2013	2030
Boulder County	161,089	239,740	251,526	264,722	297,100	397,456
City of Boulder	73,650	90,255	96,968	97,750	101,905	117,400
Remainder of County	87,439	149,485	154,558	166,972	195,195	280,056
City of Boulder Share	46%	38%	39%	37%	34%	30%

Source: Boulder County from Woods & Poole Economics (2007) based on Bureau of Economic Analysis data. City of Boulder 1990 and 2000 from Census Transportation Planning Package. City of Boulder estimate for 2006. City of Boulder 2008 and 2030 (Area I) from 2008 Community Data Report.



NONRESIDENTIAL DEMAND INDICATORS

In the impact fee study, vehicle trips or employees per demand unit are used to differentiate fees by type of nonresidential development. In Figure A9, gray shading indicates the three nonresidential development prototypes used by TischlerBise to calculate vehicle trips and estimate potential impact fee revenue. The first prototype, for goods-producing jobs, is a warehouse with 784 square feet per employee. The second prototype, for retail and restaurant jobs, is a shopping center with 50,000 square feet of floor area. To more closely match Boulder's actual floor area determined by the County Assessor's parcel database, TischlerBise used Light Industrial as the prototype for Other Services.

Figure A9. Employee and Building Area Ratios

ITE Code	Land Use / Size	Demand Unit	Wkdy Trip Ends Per Dmd Unit*	Wkdy Trip Ends Per Employee*	Emp Per Dmd Unit**	Sq Ft Per Emp
Commercial / Shopping Center						
821	25K gross leasable area	1,000 Sq Ft	110.32	na	3.33	300
820	50K gross leasable area	1,000 Sq Ft	86.56	na	2.86	350
820	100K gross leasable area	1,000 Sq Ft	67.91	na	2.50	400
820	200K gross leasable area	1,000 Sq Ft	53.28	na	2.22	450
820	400K gross leasable area	1,000 Sq Ft	41.80	na	2.00	500
General Office						
710	10K gross floor area	1,000 Sq Ft	22.66	5.06	4.48	223
710	25K gross floor area	1,000 Sq Ft	18.35	4.43	4.14	241
710	50K gross floor area	1,000 Sq Ft	15.65	4.00	3.91	256
710	100K gross floor area	1,000 Sq Ft	13.34	3.61	3.70	271
710	200K gross floor area	1,000 Sq Ft	11.37	3.26	3.49	287
Industrial						
770	Business Park***	1,000 Sq Ft	12.76	4.04	3.16	317
151	Mini-Warehouse	1,000 Sq Ft	2.50	56.28	0.04	22,512
150	Warehousing	1,000 Sq Ft	4.96	3.89	1.28	784
140	Manufacturing	1,000 Sq Ft	3.82	2.13	1.79	558
110	Light Industrial	1,000 Sq Ft	6.97	3.02	2.31	433
Other Nonresidential						
720	Medical-Dental Office	1,000 Sq Ft	36.13	8.91	4.05	247
620	Nursing Home	bed	2.37	6.55	0.36	na
610	Hospital	1,000 Sq Ft	17.57	5.20	3.38	296
565	Day Care	student	4.48	28.13	0.16	na
530	Secondary School	student	1.71	19.74	0.09	na
520	Elementary School	student	1.29	15.71	0.08	na
520	Elementary School	1,000 Sq Ft	14.49	15.71	0.92	1,084
320	Lodging	room	5.63	12.81	0.44	na

* Source: Trip Generation, Institute of Transportation Engineers (2003).

** Employees per demand unit calculated from trip rates, except for Shopping Center data, which are derived from Development Handbook and Dollars and Cents of Shopping Centers, published by the Urban Land Institute.

*** According to ITE, a Business Park is a group of flex-type buildings served by a common roadway system. The tenant space includes a variety of uses with an average mix of 20-30% office/commercial and 70-80% industrial/warehousing.

DEVELOPMENT PROJECTIONS

Key demographic data for the City of Boulder impact fee study are shown in Figure A10. Cumulative data are shown in the top section and annual increases at the bottom of the table. City of Boulder data shown with light green shading are from the 2008 Community Data

Report. Because of the recent downturn in development activity, TischlerBise used an exponential curve formula to derive interim year data between the 2008 and 2030 “end-points.” This method minimizes annual increases in the short run. Job allocation by nonresidential prototype is based on the most recent Labor Shed Area Profile Report from the U.S. Census Bureau’s website called Longitudinal Employer-Household Dynamics.

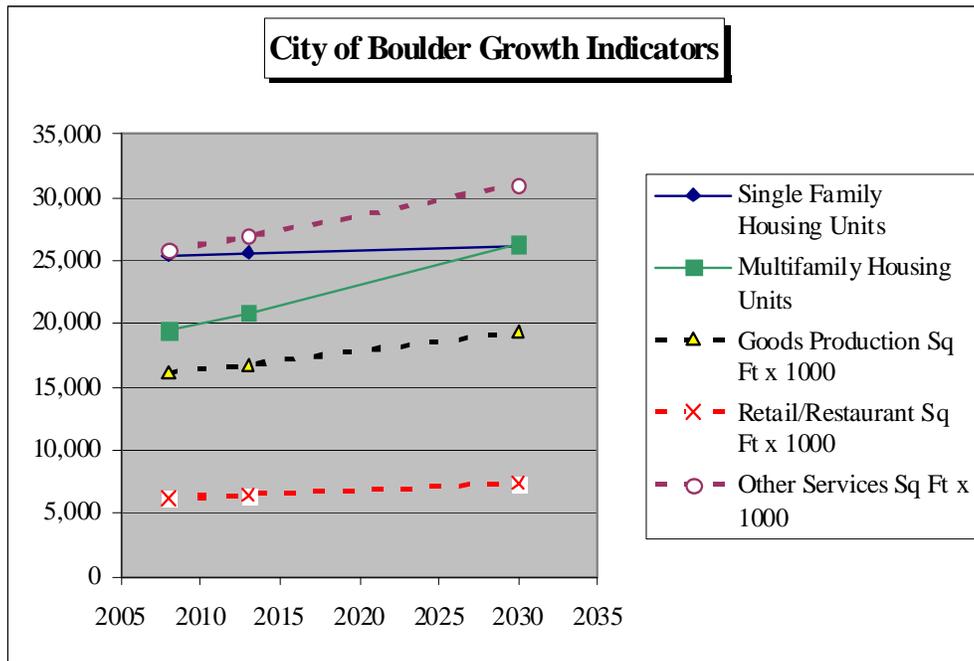
Figure A10. Citywide Demographic Data

	<i>Base Year</i>							
	2000	2008	2009	2010	2011	2012	2013	2030
<i>Cumulative</i>	<i>FY 08-09</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>22</i>	
Year-Round Population	99,093	103,100	103,754	104,413	105,076	105,743	106,414	118,500
Jobs	90,255	97,750	98,567	99,391	100,222	101,060	101,905	117,400
Housing Units	42,740	44,885	45,206	45,529	45,854	46,182	46,512	52,500
Single Family Hsg Units	23,080	25,445	25,477	25,509	25,542	25,575	25,608	26,206
All Other Hsg Units	19,660	19,440	19,729	20,020	20,313	20,608	20,905	26,294
Jobs to Housing Ratio		2.18	2.18	2.18	2.19	2.19	2.19	2.24
Persons per Hsg Unit		2.30	2.30	2.29	2.29	2.29	2.29	2.26
<u>Job Allocation by Type of Development</u>								
Goods Producing Share		21%	21%	21%	21%	21%	21%	21%
Retail/Restaurant Share		18%	18%	18%	18%	18%	18%	18%
Other Services Share		61%	61%	61%	61%	61%	61%	61%
<u>Nonres Sq Ft (x 1,000)</u>								
Goods Producing		16,090	16,230	16,360	16,500	16,640	16,780	19,330
Retail/Restaurant		6,160	6,210	6,260	6,310	6,370	6,420	7,400
Other Services		25,820	26,030	26,250	26,470	26,690	26,920	31,010
Total		48,070	48,470	48,870	49,280	49,700	50,120	57,740
Avg Sq Ft Per Job		492	492	492	492	492	492	492
								<i>2008 to 2030</i>
<u>Annual Increase</u>								<i>Increase</i>
Year-Round Population		654	659	663	667	671	676	15,400
Jobs		817	824	831	838	845	852	19,650
Housing Units		321	323	325	328	330	332	7,615
Goods Producing KSF*		140	130	140	140	140	140	3,240
Retail/Restaurant KSF*		50	50	50	60	50	50	1,240
Other Services KSF*		210	220	220	220	230	220	5,190
* KSF = square feet of floor area in thousands.								Cumulative KSF Increase =>
								Avg Anl KSF Increase =>
								9,670
								440

Key land use assumptions for City of Boulder are summarized in Figure A11. Residential growth rates range from 0.1% annually for Single Family housing to 1.5% per year for Multifamily housing types. Nonresidential growth rates average 0.8% per year. Over the next five years, housing unit construction is projected to average 326 units per year.

Figure A11. Summary of Land Use Assumptions

Boulder, Colorado	2008	2013	2030	2008 to 2013	
	FY08-09	FY13-14	FY30-31	Average Annual	
				Increase	Growth Rate
Single Family Housing Units	25,445	25,608	26,206	33	0.1%
Multifamily Housing Units	19,440	20,905	26,294	293	1.5%
Goods Production Sq Ft x 1000	16,090	16,780	19,330	138	0.9%
Retail/Restaurant Sq Ft x 1000	6,160	6,420	7,400	52	0.8%
Other Services Sq Ft x 1000	25,820	26,920	31,010	220	0.9%



DEVELOPMENT IMPACT FEE STUDY

City of Boulder, Colorado



January 8, 2009

Prepared By:

TischlerBise
Fiscal, Economic & Planning Consultants

DEVELOPMENT IMPACT FEE STUDY

City of Boulder, Colorado

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EXECUTIVE SUMMARY

OVERVIEW

The City of Boulder retained TischlerBise to prepare an impact fee study for various infrastructure categories. This report updates the Development Excise Tax (DET) study prepared in 1996 when the firm was known as Tischler & Associates, Inc. Although the City currently has development excise taxes in place, it was the City's desire to have the current excise tax methodologies updated with an impact fee approach, thereby giving the City the option to adopt impact fees and/or revise the current development excise taxes.

Impact fees are one-time payments used to fund system improvements needed to accommodate development. This report documents the data, methodology, and results of the impact fee calculations. The methods used to calculate impact fees in this study are intended to satisfy all legal requirements governing such fees, including provisions of the U. S. Constitution and the Colorado Development Impact Fee Act. The following infrastructure categories have been developed with methodologies that meet the requirements to be adopted as impact fees.

- Library
- Parks and Recreation
- Human Services
- Municipal Services
- Police
- Fire

IMPACT FEE SUMMARY

As documented in this report, impact fees for the City of Boulder are proportionate and reasonably related to the capital facility service demands of new development. The written analysis of each impact fee methodology, establish that impact fees are necessary to achieve an equitable allocation of costs in comparison to the benefits received. Impact fee methodologies also identify the extent to which newly developed properties are entitled to various types of

credits to avoid potential double payment of capital costs. An impact fee represents new growth's proportionate share of capital facility needs. By law, impact fees can only be used for *capital* improvements, not operating or maintenance costs. Impact fees are subject to legal standards, which require fulfillment of three key elements: need, benefit and proportionality. First, to justify a fee for public facilities, it must be demonstrated that new development will create a **need** for capital improvements. Second, new development must derive a **benefit** from the payment of the fees (i.e., in the form of public facilities constructed within a reasonable timeframe). Third, the fee paid by a particular type of development should not exceed its **proportional** share of the capital cost for system improvements.

TischlerBise documented appropriate demand indicators by type of development. Specific capital costs have been identified using local data and costs. This report includes summary tables indicating the specific factors used to derive the impact fees. These factors are referred to as level of service, or infrastructure standards.

Methodologies and Approach

There are three basic *methods* used to calculate impact fees. The **incremental expansion method** documents the current level of service for each type of public facility, in both quantitative and qualitative measures. The intent is to use revenue collected to expand or provide additional facilities, as needed to accommodate new development, based on the current cost to provide capital improvements. The **plan-based method** is commonly used for public facilities that have adopted plans or engineering studies to guide capital improvements, such as utility systems. A third approach, known as the **cost recovery method**, is based on the rationale that new development is paying for its share of the useful life and remaining unused capacity of an existing facility. All three methodologies are employed for the fees included in this study and are described further in this report in the respective fee chapter. A summary is provided in Figure 1 showing the methodologies, infrastructure components, and allocations used to calculate impact fees for the City of Boulder.

Figure 1. Summary of Proposed Fee Methods and Infrastructure Components

Type of Public Facility	Incremental Expansion	Plan Based	Cost Recovery	Cost Allocation
<i>Library</i>	▪ Collection Materials	Not applicable	▪ Library Space	100% Residential
<i>Parks and Recreation</i>	▪ Park Improvements ▪ Recreation Space ▪ Parks and Rec Admin & Support Facilities	Not applicable	Not applicable	100% Residential
<i>Human Services</i>	▪ Human Service Space	Not applicable	Not applicable	100% Residential
<i>Municipal Services</i>	▪ Government Space	Not applicable	Not applicable	Functional Population
<i>Police</i>	▪ Station Space	▪ Communications Center	Not applicable	Functional Population
<i>Fire</i>	▪ Stations ▪ Apparatus	Not applicable	Not applicable	Calls for Service

Credits

A general requirement common to impact fee methodologies is the evaluation of *credits*. Two types of credits should be considered, **future revenue credits** and **site-specific credits**. Revenue credits may be necessary to avoid potential double payment situations arising from a one-time impact fee plus the payment of other revenues (e.g., property taxes) that may also fund growth-related capital improvements. Because new development may provide front-end funding of infrastructure, there is a potential for double payment of capital costs due to future payments on debt for public facilities. This type of credit is included for Library, Parks and Recreation, and Human Services.

The second type of credit is a **site-specific credit** for system improvements that have been included in the impact fee calculations. Policies and procedures related to site-specific credits for system improvements should be addressed in the ordinance that establishes the development fees. However, the general concept is that developers may be eligible for site-specific credits only if they provide system improvements that have been included in the impact fee calculations. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees.

Maximum Allowable Impact Fees by Type of Land Use

The impact fees calculated for the City of Boulder represent the highest amount feasible for each type of applicable land use, or *maximum allowable* amounts, which represents new growth's proportionate share of the cost for the appropriate capital facilities. Figures 2, 3, and 4 provide schedules of the *maximum allowable impact fees* by type of land use. For residential impact, fees will be imposed according to square feet of finished floor area. For nonresidential development, fees will be assessed per square feet of floor area or unique demand indicators such as the number of rooms in a hotel. The City may adopt fees that are less than the amounts shown. However, a reduction in impact fee revenue will necessitate an increase in other revenues, a decrease in planned capital expenditures and/or a decrease in the City's level of service standards.

Development excise taxes for single-family residential development are currently imposed by type of housing with no variation by size of unit. For comparison of the proposed impact fees with the current DET, the row with grey shading at the top of the following table indicates proposed impact fee amounts for the average size unit. The current DET amount and proposed increase per housing unit are on the right side of the table.

Figure 2. Summary of Maximum Allowable Impact Fees for Single Family Residential

		MAXIMUM ALLOWABLE IMPACT FEES								
		<i>Library</i>	<i>Parks & Recreation</i>	<i>Human Services</i>	<i>Municipal Facilities</i>	<i>Police</i>	<i>Fire</i>	<i>TOTAL</i>	Current DET Less Transportation	Proposed Increase
<i>Single Family</i>	<i>Per Housing Unit</i>								\$3,568.48	\$789.52
<i>Average Size</i>	<i>Square Feet</i>	\$441	\$3,022	\$142	\$269	\$283	\$201	\$4,358		
	900 or less	\$192	\$1,314	\$62	\$117	\$123	\$87	\$1,895		
	1,000	\$222	\$1,524	\$72	\$135	\$143	\$101	\$2,197		
	1,100	\$249	\$1,708	\$80	\$152	\$160	\$113	\$2,462		
	1,200	\$274	\$1,877	\$88	\$167	\$176	\$124	\$2,706		
	1,300	\$296	\$2,032	\$96	\$181	\$190	\$135	\$2,930		
	1,400	\$317	\$2,175	\$102	\$193	\$204	\$144	\$3,135		
	1,500	\$337	\$2,309	\$109	\$205	\$216	\$153	\$3,329		
	1,600	\$355	\$2,434	\$115	\$217	\$228	\$161	\$3,510		
	1,700	\$372	\$2,552	\$120	\$227	\$239	\$169	\$3,679		
	1,800	\$389	\$2,662	\$125	\$237	\$249	\$177	\$3,839		
	1,900	\$404	\$2,767	\$130	\$246	\$259	\$184	\$3,990		
	2,000	\$418	\$2,866	\$135	\$255	\$269	\$190	\$4,133		
	2,100	\$432	\$2,961	\$139	\$263	\$277	\$196	\$4,268		
	2,200	\$445	\$3,051	\$144	\$272	\$286	\$202	\$4,400		
	2,300	\$458	\$3,137	\$148	\$279	\$294	\$208	\$4,524		
	2,400	\$470	\$3,220	\$152	\$287	\$302	\$214	\$4,645		
	2,500	\$482	\$3,299	\$155	\$294	\$309	\$219	\$4,758		
	2,600	\$493	\$3,375	\$159	\$300	\$316	\$224	\$4,867		
	2,700	\$503	\$3,448	\$163	\$307	\$323	\$229	\$4,973		
	2,800	\$514	\$3,518	\$166	\$313	\$330	\$234	\$5,075		
	2,900	\$524	\$3,586	\$169	\$319	\$336	\$238	\$5,172		
	3,000	\$533	\$3,652	\$172	\$325	\$342	\$242	\$5,266		
	3,100	\$542	\$3,715	\$175	\$331	\$348	\$247	\$5,358		
	3,200	\$551	\$3,777	\$178	\$336	\$354	\$251	\$5,447		
	3,300	\$560	\$3,836	\$181	\$342	\$360	\$255	\$5,534		
	3,400	\$569	\$3,894	\$184	\$347	\$365	\$259	\$5,618		
	3,500	\$577	\$3,950	\$186	\$352	\$370	\$262	\$5,697		
	3,600	\$585	\$4,005	\$189	\$357	\$375	\$266	\$5,777		
	3,700	\$593	\$4,058	\$191	\$361	\$380	\$269	\$5,852		

Development excise taxes for multifamily residential development are currently imposed by type of housing with no variation by size of unit. For comparison of the proposed impact fees with the current DET, the row with grey shading at the top of the following table indicates proposed impact fee amounts for the average size unit. The current DET amount and proposed increase per housing unit are on the right side of the table.

Figure 3. Summary of Maximum Allowable Impact Fees for Multifamily Residential

MAXIMUM ALLOWABLE IMPACT FEES								Current DET Less Transportation	Proposed Increase
<i>Library Parks & Human Municipal Police Fire TOTAL</i>									
<i>Recreation Services Facilities</i>									
<i>Multifamily</i>	<i>Per Housing Unit</i>								
	<i>Average Size</i>	\$307	\$2,102	\$99	\$187	\$197	\$230	\$3,122	\$2,380.54
<i>Square Feet</i>									
	600	\$202	\$1,388	\$65	\$123	\$130	\$151	\$2,059	
	700	\$245	\$1,681	\$79	\$149	\$157	\$183	\$2,494	
	800	\$282	\$1,934	\$91	\$172	\$181	\$211	\$2,871	
	900	\$315	\$2,158	\$102	\$192	\$202	\$236	\$3,205	
	1,000	\$344	\$2,357	\$111	\$210	\$221	\$257	\$3,500	
	1,100	\$370	\$2,538	\$120	\$226	\$238	\$277	\$3,769	
	1,200	\$395	\$2,703	\$127	\$241	\$253	\$295	\$4,014	
	1,300	\$417	\$2,855	\$134	\$254	\$267	\$312	\$4,239	
	1,400	\$437	\$2,996	\$141	\$267	\$281	\$327	\$4,449	
	1,500	\$456	\$3,127	\$147	\$278	\$293	\$342	\$4,643	
	1,600	\$474	\$3,249	\$153	\$289	\$304	\$355	\$4,824	

Currently, development excise taxes for nonresidential development are imposed per square foot of floor area with no variation by type of development. To make the proposed impact fees proportionate to the demand for infrastructure, TischlerBise used trip generation rates or jobs per demand unit to vary the impact fees by type of development. With this change in methodology, proposed fee amounts for retail and office development will increase. As shown in Figure 4, proposed impact fees for and industrial and warehouse development are less than the current development excise taxes.

Figure 4. Summary of Maximum Allowable Impact Fees for Nonresidential

ITE Code		Maximum Allowable Impact Fees				Current DET Less Transportation	Proposed Increase (Decrease)
		Municipal Facilities	Police	Fire	TOTAL		
<i>Nonresidential (per Square Foot of Floor Area)</i>							
820	Retail / Restaurant	\$0.13	\$0.44	\$0.35	\$0.92	\$0.686	\$0.23
770	Business Park	\$0.15	\$0.10	\$0.09	\$0.34	\$0.686	(\$0.35)
710	Office	\$0.18	\$0.15	\$0.52	\$0.85	\$0.686	\$0.16
610	Hospital	\$0.16	\$0.14	\$0.45	\$0.75	\$0.686	\$0.06
520	School	\$0.04	\$0.07	\$0.12	\$0.23	\$0.686	(\$0.46)
151	Mini-Warehouse	\$0.00	\$0.02	\$0.00	\$0.02	\$0.686	(\$0.67)
150	Warehousing	\$0.06	\$0.04	\$0.04	\$0.14	\$0.686	(\$0.55)
110	Light Industrial	\$0.11	\$0.05	\$0.07	\$0.23	\$0.686	(\$0.46)
<i>Other Nonresidential (per unique demand indicator)</i>							
620	Nursing Home (per bed)	\$17	\$19	\$48	\$84		
565	Day Care (per student)	\$7	\$17	\$21	\$45		
320	Lodging (per room)	\$21	\$47	\$59	\$127		

INTRODUCTION TO IMPACT FEES

DEFINITION

Impact fees, also known as development or development impact fees, are one-time payments used to fund capital improvements necessitated by new growth. Impact fees have been utilized by local governments in various forms for at least fifty years. Impact fees do have limitations, and should not be regarded as the total solution for infrastructure financing needs. Rather, they should be considered one component of a comprehensive portfolio to ensure adequate provision of public facilities with the goal of maintaining current levels of service in a community. Any community considering impact fees should note the following limitations:

- Impact fees can only be used to finance capital infrastructure and cannot be used to finance ongoing operations and/or maintenance costs;
- Impact fees cannot be deposited in the local government's General Fund. The funds must be accounted for separately in individual accounts and earmarked for the capital expenses for which they were collected; and
- Impact fees cannot be used to correct existing infrastructure deficiencies unless there is a funding plan in place to correct the deficiency for all current residents and businesses in the community.

LEGAL FRAMEWORK

U.S. Constitution. Like all land use regulations, development exactions—including impact fees—are subject to the Fifth Amendment prohibition on taking of private property for public use without just compensation. Both state and federal courts have recognized the imposition of impact fees on development as a legitimate form of land use regulation, provided the fees meet standards intended to protect against regulatory takings. To comply with the Fifth Amendment, development regulations must be shown to substantially advance a legitimate governmental interest. In the case of impact fees, that interest is in the protection of public health, safety, and welfare by ensuring that development is not detrimental to the quality of essential public services.

There is little federal case law specifically dealing with impact fees, although other rulings on other types of exactions (e.g., land dedication requirements) are relevant. In one of the most important exaction cases, the U. S. Supreme Court found that a government agency imposing

exactions on development must demonstrate an “essential nexus” between the exaction and the interest being protected (see *Nollan v. California Coastal Commission*, 1987). In a more recent case (*Dolan v. City of Tigard, OR*, 1994), the Court ruled that an exaction also must be “roughly proportional” to the burden created by development. However, the *Dolan* decision appeared to set a higher standard of review for mandatory dedications of land than for monetary exactions such as impact fees.

FINDINGS

There are three requirements for impact fees that are closely related to “rational nexus” or “reasonable relationship” requirements enunciated by a number of state courts. Although the term “dual rational nexus” is often used to characterize the standard by which courts evaluate the validity of impact fees under the U.S. Constitution, we prefer a more rigorous formulation that recognizes three elements: “impact or need,” “benefit,” and “proportionality.” The dual rational nexus test explicitly addresses only the first two, although proportionality is reasonably implied, and was specifically mentioned by the U.S. Supreme Court in the *Dolan* case. The reasonable relationship language of the statute is considered less strict than the rational nexus standard used by many courts. Individual elements of the nexus standard are discussed further in the following paragraphs.

Demonstrating an Impact. All new development in a community creates additional demands on some, or all, public facilities provided by local government. If the supply of facilities is not increased to satisfy that additional demand, the quality or availability of public services for the entire community will deteriorate. Impact fees may be used to recover the cost of development-related facilities, but only to the extent that the need for facilities is a consequence of development that is subject to the fees. The *Nollan* decision reinforced the principle that development exactions may be used only to mitigate conditions created by the developments upon which they are imposed. That principle clearly applies to impact fees. In this study, the impact of development on improvement needs is analyzed in terms of quantifiable relationships between various types of development and the demand for specific facilities, based on applicable level-of-service standards.

Demonstrating a Benefit. A sufficient benefit relationship requires that facility fee revenues be segregated from other funds and expended only on the facilities for which the fees were charged. Fees must be expended in a timely manner and the facilities funded by the fees must serve the development paying the fees. However, nothing in the U.S. Constitution or the State enabling legislation requires that facilities funded with fee revenues be available *exclusively* to development paying the fees. In other words, existing development may benefit from these improvements as well.

Procedures for the earmarking and expenditure of fee revenues are typically mandated by the State enabling act, as are procedures to ensure that the fees are expended expeditiously or refunded. All of these requirements are intended to ensure that developments benefit from the fees they are required to pay. Thus, an adequate showing of benefit must address procedural as well as substantive issues.

Demonstrating Proportionality. The requirement that exactions be proportional to the impacts of development was clearly stated by the U.S. Supreme Court in the *Dolan* case (although the relevance of that decision to impact fees has been debated) and is logically necessary to establish a proper nexus. Proportionality is established through the procedures used to identify development-related facility costs, and in the methods used to calculate impact fees for various types of facilities and categories of development. The demand for facilities is measured in terms of relevant and measurable attributes of development. For example, the need for school improvements is measured by the number of public school-age children generated by development.

METHODOLOGIES AND CREDITS

Any one of several legitimate methods may be used to calculate impact fees. The choice of a particular method depends primarily on the service characteristics and planning requirements for the facility type being addressed. Each method has advantages and disadvantages in a particular situation, and to some extent can be interchangeable, because each allocates facility costs in proportion to the needs created by development.

Reduced to its simplest terms, the process of calculating impact fees involves two main steps: (1) determining the cost of development-related capital improvements and (2) allocating those costs equitably to various types of development. In practice, though, the calculation of impact fees can become quite complicated because of the many variables involved in defining the relationship between development and the need for facilities. The following paragraphs discuss three basic methods for calculating impact fees and how those methods can be applied.

Plan-Based Fee Calculation. The plan-based method allocates costs for a specified set of improvements to a specified amount of development. The improvements are identified by a facility plan and development is identified by a land use plan. In this method, the total cost of relevant facilities is divided by total demand to calculate a cost per unit of demand. Then, the cost per unit of demand is multiplied by the amount of demand per unit of development (e.g., housing units or square feet of building area) in each category to arrive at a cost per specific unit of development (e.g., single family detached unit).

Cost Recovery or Buy-In Fee Calculation. The rationale for the cost recovery approach is that new development is paying for its share of the useful life and remaining capacity of facilities already built or land already purchased from which new growth will benefit. This methodology is often used for closed systems that were oversized such as sewer and water facilities.

Incremental Expansion Fee Calculation. The incremental expansion method documents the current level of service (LOS) for each type of public facility in both quantitative and qualitative measures, based on an existing service standard (such as square feet per student). This approach ensures there are no existing infrastructure deficiencies or surplus capacity in infrastructure. New development is only paying its proportionate share for growth-related infrastructure. The level of service standards are determined in a manner similar to the current replacement cost approach used by property insurance companies. However, in contrast to insurance practices, the fee revenues would not be for renewal and/or replacement of existing facilities. Rather, revenue will be used to expand or provide additional facilities, as needed, to accommodate new development. An incremental expansion cost method is best suited for public facilities that will be expanded in regular increments, with LOS standards based on current conditions in the community.

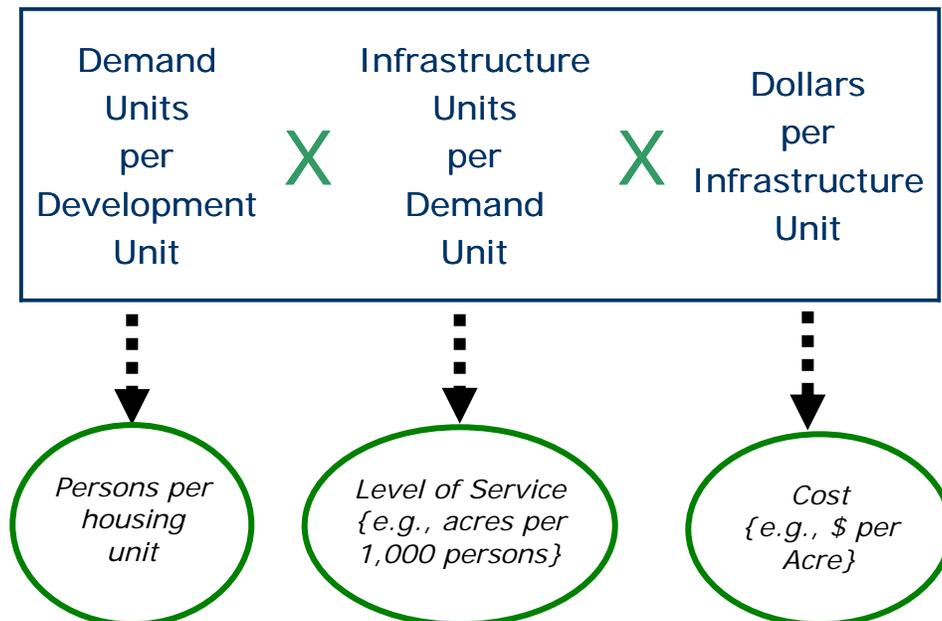
Credits. Regardless of the methodology, a consideration of “credits” is integral to the development of a legally valid impact fee methodology. There are two types of “credits” each with specific, distinct characteristics, but both of which should be addressed in the development of impact fees. The first is a credit due to possible double payment situations. This could occur when contributions are made by the property owner toward the capital costs of the public facility covered by the impact fee. This type of credit is integrated into the impact fee calculation. The second is a credit toward the payment of a fee for dedication of public sites or improvements provided by the developer and for which the facility fee is imposed. This type of credit is addressed in the administration and implementation of a facility fee program.

CONCEPTUAL IMPACT FEE FORMULA

In contrast to development exactions, which are typically referred to as project-level improvements, impact fees fund growth-related infrastructure that will benefit multiple development projects, or even the entire jurisdiction. The basic steps in a generic impact fee formula are illustrated in Figure 5. The first step (see the left box) is to determine an appropriate demand indicator, or service unit, for the particular type of infrastructure. The demand/service indicator measures the number of demand or service units for each unit of

development. For example, an appropriate indicator of the demand for parks is population growth and the increase in population can be estimated from the average number of persons per housing unit. The second step in the generic impact fee formula is shown in the middle box below. Infrastructure units per demand unit are typically called “Level of Service” (LOS) standards. In keeping with the park example, a common LOS standard is park acreage per thousand people. The third step in the generic impact fee formula, as illustrated in the right box, is the cost of various infrastructure units. To complete the park example, this part of the formula would establish the cost per acre for park development.

Figure 5. General Impact Fee Steps

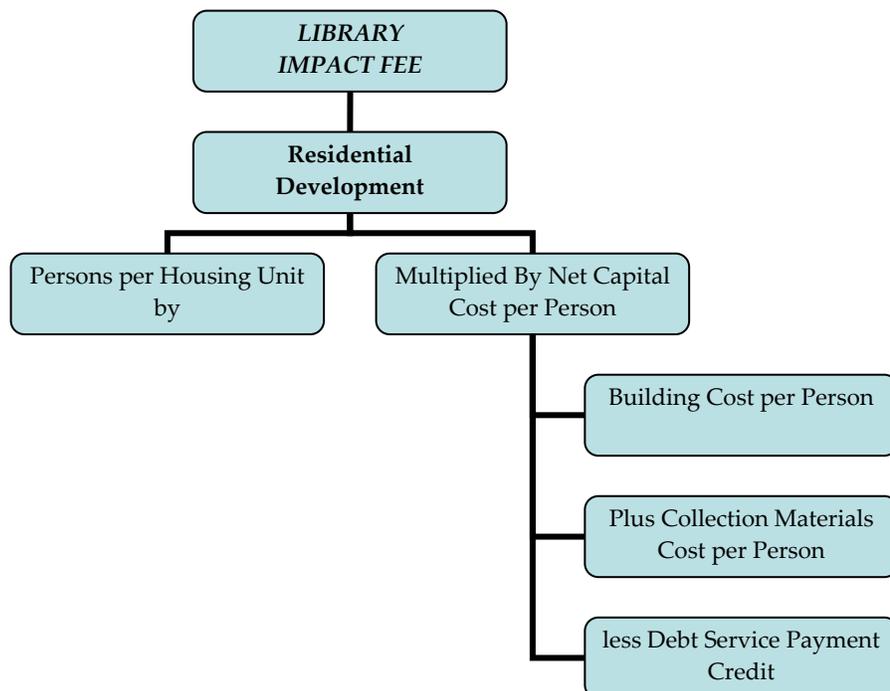


LIBRARY IMPACT FEES

METHODOLOGY

The Library impact fee calculation uses the cost recovery and incremental expansion methodologies. Components of the Library fee include costs for Library buildings and materials included in the Library's collections. The Library system current consists of a Main Library and three branch locations, which are anticipated to serve new development for the foreseeable future. A cost recovery approach is used to calculate new growth's fair share of the City's costs for this facility. *However, since the City has only three years remaining on debt service payments for the most recent library capacity expansion, TischlerBise recommends that the cost recovery component for Library space be eliminated once this debt is retired. If at some point in the future the City decides to construct an additional branch or expand existing facilities, the impact fee methodology and amount should be revised to reflect this change.* An incremental approach is used for collection materials. All costs are allocated 100 percent to residential development. Figure 6 diagrams the general methodology used to calculate the Library Impact Fee. It is intended to read like an outline, with lower levels providing a more detailed breakdown of the impact fee components. The impact fee is derived from the product of persons per housing unit (by type of unit) multiplied by the net capital cost per person. The boxes in the next level down indicate detail on the components included in the fee.

Figure 6. Library Impact Fee Methodology Chart



LIBRARY LEVEL OF SERVICE STANDARDS AND COSTS***Library Building Cost Recovery Component***

The City of Boulder Library System consists of a Main Library and three branch locations. Total library system square footage totals 113,614 square feet. As noted above, at this time the City does not anticipate expanding the Library System. Because the Library System currently has remaining capacity, levels of service are based on projected population in 2030, per discussions with the City. Costs are based on current City replacement values using a cost recovery methodology where new development is buying into remaining capacity of existing facilities.

Figure 7 provides levels of service and costs for the City of Boulder Library System. According to information provided by the City, the Library System has an asset value of \$18,682,862 reflecting facilities owned by the City. When this is compared to the projected population in 2030 (118,500), the cost per demand unit is \$157 per person.

Figure 7. Library Level of Service Standards and Cost Factors

<i>Buildings</i>	<i>Square Feet</i>	<i>Cost/SF*</i>	<i>Current Value</i>
Main Library	92,164	\$183	\$16,866,012
Meadows Branch	7,800	leased	
Reynolds Branch	9,650	\$129	\$1,244,850
Carnegie Branch	4,000	\$143	\$572,000
TOTAL	113,614		\$18,682,862
	Projected Population in 2030		118,500
	Cost per Person		\$157

* City of Boulder Property Schedule, January 2008.

Library Collection Materials Incremental Expansion

The Library System's collection includes adult and juvenile books, electronic/audio books, music, videos, and periodicals. The total number of current units is 364,931 with a total replacement value of approximately \$6.6 million. Based on the current estimated City population of 103,100, this equates to a level of service of \$63 per person. Figure 8 provides detail on the current inventory and average unit costs for each type of material. Unit costs were provided to TischlerBise by City staff.

Figure 8. Library Collection Materials Level of Service Standards

<i>Collection Materials</i>	<i># of units</i>	<i>Unit Price**</i>	<i>Current Value</i>
Books	292,959	\$16	\$4,687,000
Electronic/Audio Books	44,553	\$34	\$1,515,000
Music CDs	13,978	\$12	\$168,000
Videos	12,754	\$13	\$166,000
Periodicals	687	\$60	\$41,000
TOTAL	364,931		\$6,577,000
	Projected Population in 2008		103,100
	Cost per Person		\$63

** City of Boulder Library Staff.

CREDIT EVALUATION

As discussed previously, the City has outstanding debt for Library improvements that will be retired through property taxes. Because of this, TischlerBise recommends that a credit be included in the impact fee for future debt service payments on this General Obligation debt. New residential development in the City of Boulder that will pay Library impact fees will also contribute to future debt service payments paid from property tax revenue, therefore a credit is necessary.

City staff provided debt service schedules for the current outstanding Library debt. To account for the time value of money, annual principal payments per capita are discounted using a net present value formula based on an estimated average interest rate. Figure 9 shows the credit calculation based on the projected debt service payments starting in fiscal year 2009 through the remainder of the bond's term. The debt is allocated 100 percent to residential development. The applicable net present value of the credit is \$28 per person. This will be subtracted from the gross capital cost per demand unit to derive a net capital cost per person in calculating the maximum supportable fee.

Figure 9. Credit for Future Library Debt Service Payments

<i>Year</i>	<i>Total Principal and Interest</i>	<i>Population</i>	<i>Debt Payment Per Capita</i>
2009	\$1,079,000	103,754	\$10.40
2010	\$1,074,000	104,413	\$10.29
2011	\$1,073,000	105,076	\$10.21
		Discount APR	6%
		Present Value	\$28

SUMMARY OF FACTORS FOR LIBRARY IMPACT FEE

Infrastructure standards used to calculate the Library impact fees are shown in the boxed area of Figure 10. Impact fees for Libraries are based on household size for two types of residential units: single-family units (includes single family detached, single family attached, and manufactured homes) and all other units. Level of service standards are based on costs per person for Library buildings and collection materials as described in the previous sections and summarized below. Each cost component of the impact fee is shown as a cost per person. The debt service payment credit (\$28) is then subtracted from the gross capital cost per person to determine the net capital cost per person for residential development (i.e., \$192 per person).

Figure 10. Library Impact Fee Level-of-Service Standard Summary

<i>Standards:</i>	
<i>Persons Per Housing Unit</i>	
Single Family (SFD, SFA & MH)	2.3
All Other Types	1.6
<i>Level Of Service</i>	<u>Per Person</u>
Building Cost	\$157
Collection Cost	\$63
Debt Service Credit	(\$28)
Net Capital Cost	\$192

MAXIMUM ALLOWABLE IMPACT FEES FOR LIBRARIES

Figure 11 shows the schedule of maximum allowable impact fees for Libraries in Boulder. The amounts are calculated by multiplying the persons per housing unit for each unit type and size by the net capital cost per person. For example, for the average single family unit, the persons per housing unit of 2.3 is multiplied by the net capital cost of \$192 (from the previous table) for an impact fee amount of \$441 per single family housing unit and \$307 per unit for all other types of units. Number of persons by square feet of finished floor area is discussed further in the Appendix.

Figure 11. Library Maximum Allowable Impact Fees

<i>Square Feet</i> (finished floor area)	<i>Persons per Housing Unit</i>		<i>Impact Fee per Housing Unit</i>	
	<i>Single Family</i> (SFD, SFA & MH)	<i>All Other</i> <i>Types</i>	<i>Single Family</i> (SFD, SFA & MH)	<i>All Other</i> <i>Types</i>
Wt Avg	2.30	1.60	\$441	\$307
600	1.00	1.06	\$192	\$202
700	1.00	1.28	\$192	\$245
800	1.00	1.47	\$192	\$282
900	1.00	1.64	\$192	\$315
1,000	1.16	1.79	\$222	\$344
1,100	1.30	1.93	\$249	\$370
1,200	1.43	2.06	\$274	\$395
1,300	1.55	2.17	\$296	\$417
1,400	1.66	2.28	\$317	\$437
1,500	1.76	2.38	\$337	\$456
1,600	1.85	2.47	\$355	\$474
1,700	1.94		\$372	
1,800	2.03		\$389	
1,900	2.11		\$404	
2,000	2.18		\$418	
2,100	2.25		\$432	
2,200	2.32		\$445	
2,300	2.39		\$458	
2,400	2.45		\$470	
2,500	2.51		\$482	
2,600	2.57		\$493	
2,700	2.62		\$503	
2,800	2.68		\$514	
2,900	2.73		\$524	
3,000	2.78		\$533	
3,100	2.83		\$542	
3,200	2.87		\$551	
3,300	2.92		\$560	
3,400	2.96		\$569	
3,500	3.01		\$577	
3,600	3.05		\$585	
3,700	3.09		\$593	

PARKS AND RECREATION IMPACT FEES

METHODOLOGY

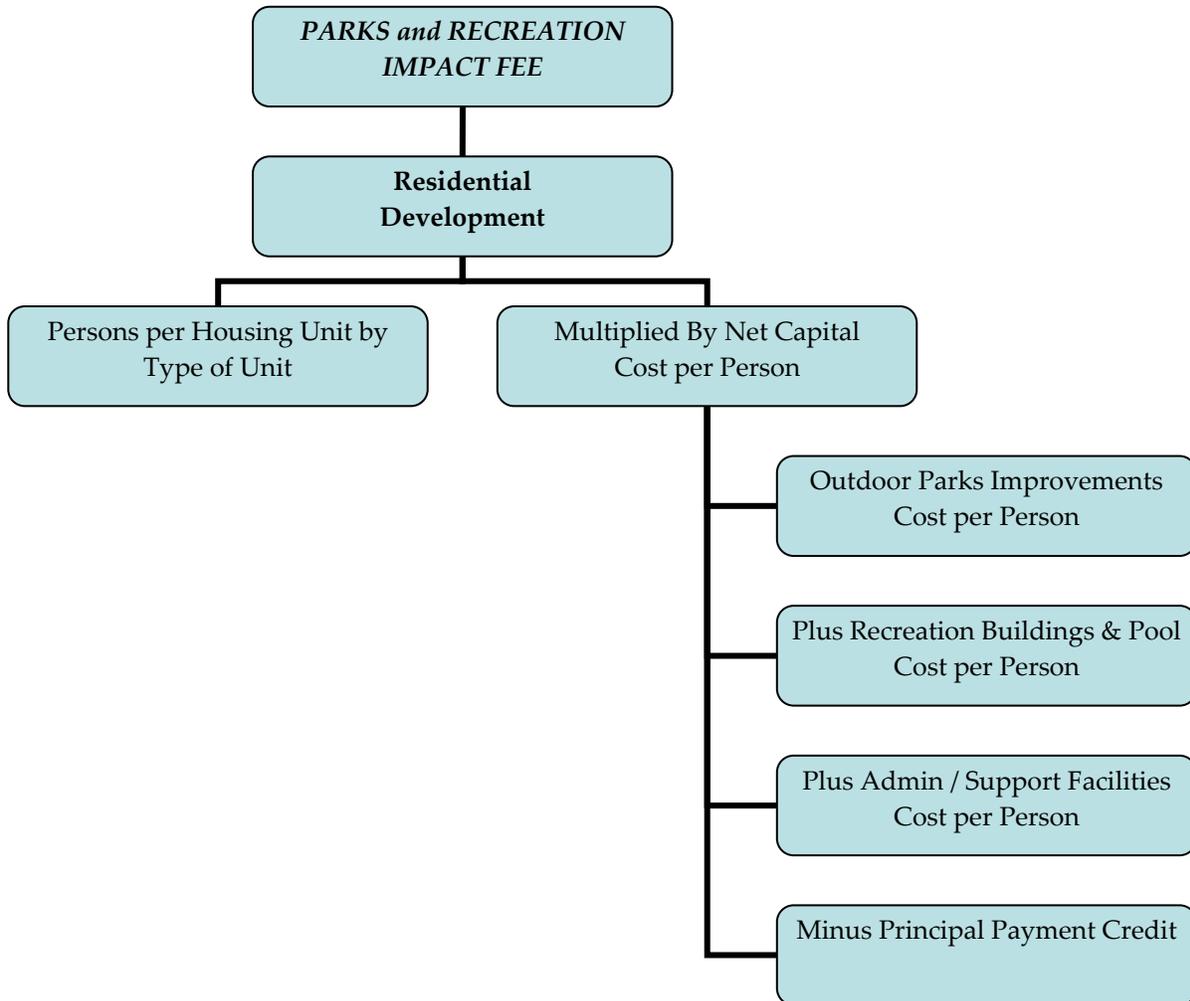
The City of Boulder Parks and Recreation Impact Fee is derived using an incremental expansion methodology. Parks and Recreation impact fees should only be assessed on residential development. Three main components are included in the fee calculation: Outdoor Park Improvements, Recreation Facilities and Pools, and Administrative/Support Facilities. Outdoor Park Improvements include facilities that are community-level facilities serving the entire city, including larger Neighborhood Parks with athletic fields or other improvements that draw patrons throughout Boulder. Additional land for parks is not included because the City has an inventory of parkland on which it intends to make improvements with impact fees. According to the 2006 Master Plan for Parks and Recreation, the system's current park acreage exceeds the department's guidelines established for park acreage per 1,000 residents, as well as meets the guidelines for Boulder's projected population at build-out.¹ Therefore, land is not included as a fee component.

Also included in the fee calculation are Recreation Facilities and Pools. The City's Recreation facilities serve a citywide population and the City expects to expand those types of facilities as well. Finally, Parks and Recreation Administrative / Support Facilities are included. All facility costs are allocated 100 percent to residential development. Smaller-scale recreation amenities are excluded because they serve more limited areas, which would require implementation of multiple service areas and are not recommended due to higher administrative costs and limited revenue generated by sub-areas.

Figure 12 diagrams the general methodology used to calculate the Parks and Recreation Impact Fee. It is intended to read like an outline, with lower levels providing a more detailed breakdown of the impact fee components. The impact fee is derived from the product of persons per housing unit (by type) multiplied by the net capital cost per person. The boxes in the next level down indicate detail on the components.

¹ *Parks and Recreation Master Plan, 2006* (p. 23)

Figure 12. Parks and Recreation Impact Fee Methodology Chart



PARKS & RECREATION LEVEL OF SERVICE STANDARDS AND COSTS

Outdoor Park Improvements

The Outdoor Park component of the Parks and Recreation impact fees are based on the City's current inventory of existing citywide parks. The demand base for the City's park facilities is population. Levels of service are based on the current amount of infrastructure provided for the existing population. Outdoor Park Improvements include facilities that are community-level facilities serving the entire City, such as City, Community, and larger Neighborhood

Parks with athletic fields or other recreational amenities that draw from a citywide service area. The Park impact fee component is based on the incremental expansion methodology, consistent with the City's plans to make improvements to undeveloped parks. Natural lands and neighborhood parks smaller than East Mapleton (i.e. less than 7.6 acres) are excluded from the impact fees. Figure 13 provides an inventory of Outdoor Park improvements with current unit prices. Park improvements have an average cost of approximately \$272,000 per acre, which falls within the 2006 Park Master Plan's range of estimated costs for park improvements (see page 20). On a per capita basis, park improvements cost \$1,003 for each additional resident in Boulder. City staff provided unit prices for each type of improvement. Miscellaneous costs equal \$220,000 per acre, which include such items as lighting, paving (parking lots, sidewalks), site work, irrigation, and landscaping.

Figure 13. Outdoor Park Improvements Level of Service Standards and Cost Factors

Site	Improved Acres	Public Restroom	Playground	Tennis or Basketball	Ballfields	Multiuse Fields*	Soccer Fields**
Foothills Community Park	65.5	1	3		2	2	
East Boulder Community Park	53.6		1	2	2	2	
Pleasantview	52.0	1					9
Harlow Platts Community Park	50.5		1	4		2	
Gerald Stazio	42.0	3	1		7		
Scott Carpenter	16.8	1	1		1		
Tantra	16.8		1				
Chautauqua	14.8	1	1	1			
Valmont City Park	13.0						1
North Boulder	12.5	1	1		1		1
Park East	11.3		1	1			
Martin	8.3	1	1	2	1		1
Elks	7.9				1		
Crestview	7.7		1				
East Mapleton Ballfields	7.6	1	1		3		
TOTAL	380.3	10.0	14.0	10.0	18.0	9.0	9.0
Unit Price =>		\$235,000	\$300,000	\$60,000	\$285,000	\$90,000	\$750,000
Current Value =>		\$2,350,000	\$4,200,000	\$600,000	\$5,130,000	\$810,000	\$6,750,000

Itemized Improvements	\$19,840,000
Other Site Improvements***	\$83,666,000
Total Improvements	\$103,506,000
Improvements Cost per Acre	\$272,000
Population in 2008	103,100
Improvements Cost per Person	\$1,003

* Fields are an average of 1.5 acres and are open, unlined, and unprogrammed

** Soccer fields are high quality, sand-based turf fields and MLS sized.

*** Estimated @ \$220,000 per acre for irrigation, landscaping, parking, and minor improvements (see page 20 Parks and Recreation Master Plan, 2006).

Recreation Buildings and Pools

The Recreation Buildings and Pools component of the Parks and Recreation impact fee is based on the current square footage and current value of recreational facilities serving the City. As shown in Figure 14, total square footage for the City's recreational facilities is 162,695 square feet. The incremental expansion approach is used as the City plans to maintain the current level of service to accommodate new development. Total estimated current value of these facilities is approximately \$29.6 million, or \$286 for each additional resident in Boulder.

Figure 14. Recreation Buildings and Pools Level of Service Standards and Cost Factors

Facility#	Facility Name	Address	Bldg	Total
			Sq Ft	Location
				Value*
055	East Boulder Recreation Ctr (77% of total)**	5660 SIOUX DR	42,648	\$ 6,383,404
054	North Boulder Recreation Center	3170 BROADWAY	62,166	\$ 8,268,808
053	South Boulder Recreation Center	1350 GILLASPIE	35,603	\$ 5,746,072
512	Scott Carpenter Pool	30th & Arapahoe		\$ 3,026,055
061 A	SCOTT CARPENTER LOCKER ROOMS	30TH & ARAPAHOE	5,886	\$ 856,078
061 B	SCOTT CARPENTER PARK FILTER BUILDING	30TH & ARAPAHOE	500	\$ 76,693
514	SPRUCE POOL	2040 21ST STREET		\$ 1,209,246
062	Spruce Pool Bath House/Filter	2102 Spruce Street	1,810	\$ 278,478
038	Salberg Studio	19TH & ELDER	1,125	\$ 98,979
060	Pottery Lab	1010 AURORA	2,565	\$ 295,648
063	BOULDER RESERVOIR (all bldgs)	5152 NORTH 51ST	9,742	\$ 1,666,142
TOTAL			162,045	\$ 29,571,744

Population in 2008 103,100

Cost per Person \$286

* Source: City Property Schedule (2008) for building and contents.

** Facility also houses Senior Center; square footage and value shown is for Recreation Center portion.

Parks and Recreation Administration and Support Facilities

Also included in the fee calculation is a component for Administrative and Support Facilities based on the current square footage and current value of facilities serving the City. As shown in Figure 15, total square footage for the City's Parks and Recreation support facilities is 66,143 square feet. The incremental expansion approach is used as the City plans to maintain the current level of service to accommodate new development. Total estimated current value of these facilities is approximately \$4.2 million. These factors yield a cost of \$41 to accommodate each additional resident in Boulder.

Figure 15. Administrative and Support Facilities Level of Service Standards and Cost Factors

Facility#	Facility Name	Address	Bldg Sq Ft	Total Location Value*
004	Iris Center	3198 BROADWAY	16,372	\$ 1,817,388
042	Park Operations Building	5200 PEARL ST	10,073	\$ 955,016
040	Tantra Park Maintenance Shop	585 TANTRA DR	3,062	\$ 265,225
059	Stazio Ballfields Maintenance Shop	2445 Stazio Drive	5,150	\$ 333,324
061 E	SCOTT CARPENTER ATHLETICS OFFICE	30TH & ARAPAHOE	1,052	\$ 125,309
243	Valmont Storage Building	5325 Valmont	30,434	\$ 733,890
TOTAL			66,143	\$ 4,230,151

Population in 2008 103,100

Cost per Person \$41

* Source: City Property Schedule (2008)

CREDIT EVALUATION

The City has outstanding debt for parks and recreation improvements, namely for the East Boulder Recreation Center, that will be retired through property taxes. Because of this, TischlerBise recommends that a credit be included in the impact fee for future principal payments on this General Obligation debt. New residential development in the City of Boulder that will pay Parks impact fees will also contribute to future principal payment from property tax revenue.

City staff provided the amount of current outstanding Parks and Recreation debt. To account for the time value of money, annual principal payments per capita are discounted using a net present value formula based on an estimated average interest rate. Figure 16 shows the credit calculation based on the projected principal and interest payments starting in fiscal year 2009 through the remainder of the bonds' term. The debt is allocated 100 percent to residential development. The applicable net present value of the credit is \$16 per person. This will be subtracted from the gross capital cost per demand unit to derive a net capital cost per person in calculating the maximum supportable fee.

Figure 16. Credit for Future Principal Payments on Parks and Recreation Debt

Year	E Bldr Center	Total Principal and Interest*	Population	Debt Payment Per Capita
2009	\$602,000	\$463,540	103,754	\$4.47
2010	\$602,000	\$463,540	104,413	\$4.44
2011	\$602,000	\$463,540	105,076	\$4.41
2012	\$602,000	\$463,540	105,743	\$4.38
			Discount APR	6%
			Present Value	\$16

* Recreation Ctr portion of debt is 77% of total; remainder is Senior Center (in Human Services)

SUMMARY OF FACTORS FOR PARKS AND RECREATION IMPACT FEE

Infrastructure standards used to calculate the Park and Recreation impact fees are shown in Figure 17. Impact fees for Parks and Recreation are based on household size for two types of residential units: single-family units (includes single family detached, single family attached, and manufactured homes) and all other units. Level of service standards are based on current costs per person for Outdoor Park improvements, Recreation Buildings and Pools, and Administrative and Support Facilities, as described in the previous sections. Each cost component of the impact fee is shown as a cost per person. The debt service payment credit (\$16) is then subtracted from the gross capital cost per person to determine the net capital cost per person for residential development (i.e., \$1,314 per person).

Figure 17. Parks and Recreation Impact Fee Level-of-Service Standard Summary

<i>Standards:</i>	
Persons Per Housing Unit	
Single Family (SFD, SFA & MH)	2.3
All Other Types	1.6
Level Of Service	<u>Per Person</u>
Outdoor Park Improvements	\$1,003
Recreation Buildings & Pools	\$286
Support Facilities	\$41
Credit for Existing Debt	(\$16)
Net Capital Cost	\$1,314

MAXIMUM ALLOWABLE IMPACT FEES FOR PARKS AND RECREATION

Figure 18 shows the schedule of maximum allowable impact fees for Parks and Recreation in Boulder. The amounts are calculated by multiplying the persons per housing unit for each unit type and size by the net capital cost per person. For example, the average single family unit with 2.3 persons, multiplied by the net capital cost of \$1,314 (from the previous table), yields an impact fee of \$3,022 per single family housing unit. Number of persons by square feet of finished floor area is discussed further in the Appendix.

Figure 18. Parks and Recreation Maximum Allowable Impact Fees

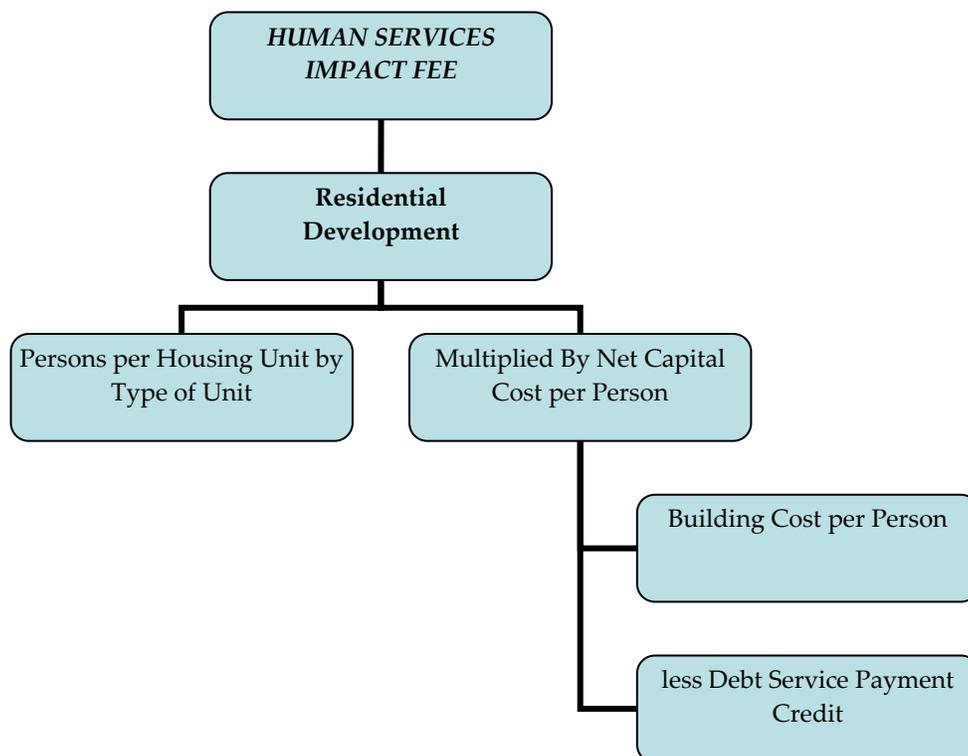
<i>Square Feet</i> (finished floor area)	<i>Persons per Housing Unit</i>		<i>Impact Fee per Housing Unit</i>	
	<i>Single Family</i> (SFD, SFA & MH)	<i>All Other</i> <i>Types</i>	<i>Single Family</i> (SFD, SFA & MH)	<i>All Other</i> <i>Types</i>
Wt Avg	2.30	1.60	\$3,022	\$2,102
600	1.00	1.06	\$1,314	\$1,388
700	1.00	1.28	\$1,314	\$1,681
800	1.00	1.47	\$1,314	\$1,934
900	1.00	1.64	\$1,314	\$2,158
1,000	1.16	1.79	\$1,524	\$2,357
1,100	1.30	1.93	\$1,708	\$2,538
1,200	1.43	2.06	\$1,877	\$2,703
1,300	1.55	2.17	\$2,032	\$2,855
1,400	1.66	2.28	\$2,175	\$2,996
1,500	1.76	2.38	\$2,309	\$3,127
1,600	1.85	2.47	\$2,434	\$3,249
1,700	1.94		\$2,552	
1,800	2.03		\$2,662	
1,900	2.11		\$2,767	
2,000	2.18		\$2,866	
2,100	2.25		\$2,961	
2,200	2.32		\$3,051	
2,300	2.39		\$3,137	
2,400	2.45		\$3,220	
2,500	2.51		\$3,299	
2,600	2.57		\$3,375	
2,700	2.62		\$3,448	
2,800	2.68		\$3,518	
2,900	2.73		\$3,586	
3,000	2.78		\$3,652	
3,100	2.83		\$3,715	
3,200	2.87		\$3,777	
3,300	2.92		\$3,836	
3,400	2.96		\$3,894	
3,500	3.01		\$3,950	
3,600	3.05		\$4,005	
3,700	3.09		\$4,058	

HUMAN SERVICES IMPACT FEES

METHODOLOGY

The Human Services impact fee calculation uses the incremental expansion methodology. Components of the Human Services fee include costs for Senior Centers and the Children, Youth and Family Center. All costs are allocated 100 percent to residential development. Figure 19 diagrams the general methodology used to calculate the Human Services Impact Fee. It is intended to read like an outline, with lower levels providing a more detailed breakdown of the impact fee components. The impact fee is derived from the product of persons per housing unit (by type of unit) multiplied by the net capital cost per person. The boxes in the next level down indicate detail on the components included in the fee.

Figure 19. Human Services Impact Fee Methodology Chart



HUMAN SERVICES LEVEL OF SERVICE STANDARDS AND COSTS

The incremental expansion methodology is used to calculate the Human Services impact fee. The first step of the analysis determines the current level of service (LOS) being provided to existing development. The second step involves determining the cost per person to provide the current LOS.

Figure 20 lists the current inventory of Human Services space in the City of Boulder. As shown, the City currently has Human Services space totaling 33,842 square feet. The current value for Human Services buildings and contents is from the City's 2008 Property Schedule. Because the City anticipates having to acquire land in the future to expand Human Services facilities, land and site improvement costs are included in the current costs shown. City staff estimates that 40 percent should be added to building costs to account for land and site improvement, raising the current value to approximately \$6.9 million. To derive the cost per demand unit, the current asset value is divided by the current City population (103,100), for a cost per demand units of \$66.71 per person.

Figure 20. Human Services Level of Service Standards and Cost Factors

<i>Building</i>	<i>Square Feet*</i>	<i>Cost/SF*</i>	<i>Current Value</i>
West Senior Center	16,188	\$199	\$3,218,000
Children, Youth & Family Center	5,215	\$214	\$1,117,000
East Senior Center	12,439	\$204	\$2,543,000
TOTAL	33,842		\$6,878,000
	Year-round Population in 2008		103,100
	Cost per Person		\$66.71

* Source: City Property Schedule (2008) for building and contents;
land and site improvements are included (additional 40% over building cost, per City of Boulder)

CREDIT EVALUATION

As discussed previously, the City has outstanding debt for Human Services improvements that will be retired through property taxes. Because of this, TischlerBise recommends that a credit be included in the impact fee for future debt service payments on this General Obligation debt. New residential development in the City of Boulder that will pay Human Services impact fees will also contribute to future debt service payments paid from property tax revenue.

City staff provided debt service schedules for the current outstanding Human Services debt. To account for the time value of money, annual principal payments per capita are discounted using a net present value formula based on an estimated average interest rate. Figure 21 shows the credit calculation based on the projected debt service payments starting in fiscal year 2009 through the remainder of the bond's term. The debt is allocated 100 percent to residential development. The applicable net present value of the credit is \$4.59 per person. This will be subtracted from the gross capital cost per demand unit to derive a net capital cost per person in calculating the maximum supportable fee.

Figure 21. Credit for Outstanding Human Services Debt Service Payments

<i>Year</i>	<i>E Bldr Center</i>	<i>Total Principal and Interest*</i>	<i>Population</i>	<i>Debt Payment Per Capita</i>
2009	\$602,000	\$138,460	103,754	\$1.33
2010	\$602,000	\$138,460	104,413	\$1.33
2011	\$602,000	\$138,460	105,076	\$1.32
2012	\$602,000	\$138,460	105,743	\$1.31
Discount APR				6%
Present Value				\$4.59

* Senior Center portion of debt is 23% of total; remainder is Recreation

SUMMARY OF FACTORS FOR HUMAN SERVICES IMPACT FEE

Infrastructure standards used to calculate the Human Services impact fees are shown in the boxed area of Figure 22. Impact fees for Human Services are based on household size for two types of residential units: single-family units (includes single family detached, single family attached, and manufactured homes) and all other units. Level of service standards are based on current costs per person for Human Services buildings as described in the previous sections and summarized below. Each cost component of the impact fee is shown as a cost per person.

The total capital cost per person is the sum of the boxed items on the figure for buildings and collections materials. As shown, the debt service payment credit (\$4.59) is then subtracted from the gross capital cost per person to determine the net capital cost per person for residential development (i.e., \$62.12 per person).

Figure 22. Human Services Impact Fee Level-of-Service Standard Summary

<i>Standards:</i>	
<i>Persons Per Housing Unit</i>	
Single Family (SFD, SFA & MH)	2.3
All Other Types	1.6
<i>Level Of Service</i>	<u>Per Person</u>
Human Services Buildings	\$66.71
Credit for Existing Debt	(\$4.59)
Net Capital Cost	\$62.12

MAXIMUM ALLOWABLE IMPACT FEES FOR HUMAN SERVICES

Figure 23 shows the schedule of maximum allowable impact fees for Human Services in Boulder. The amounts are calculated by multiplying the persons per housing unit for each unit type and size by the net capital cost per person. For example, for the average single family detached unit, the persons per housing unit of 2.3 is multiplied by the net capital cost of \$62.12 (from the previous table) for an impact fee amount of \$142 per single family housing unit. Number of persons by square feet of finished floor area is discussed further in the Appendix.

Figure 23. Human Services Maximum Allowable Impact Fees

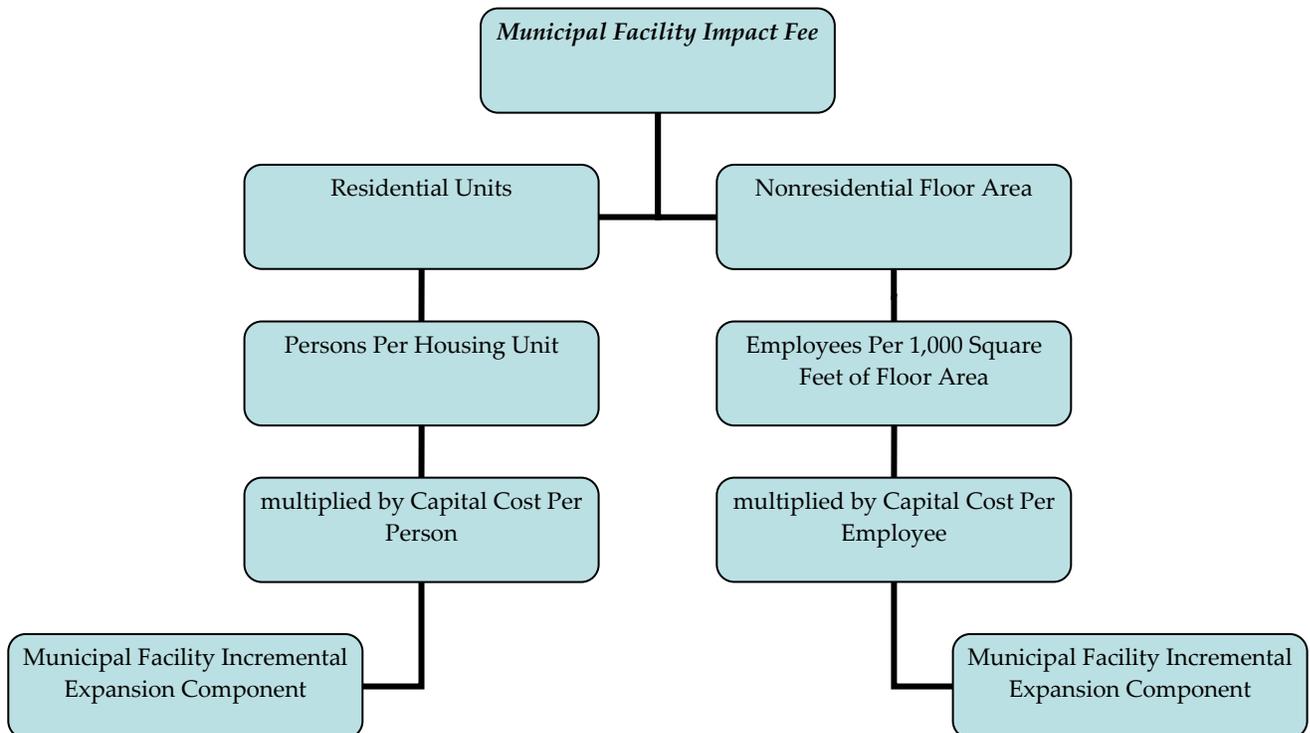
Square Feet (finished floor area)	Persons per Housing Unit		Impact Fee per Housing Unit	
	Single Family (SFD, SFA & MH)	All Other Types	Single Family (SFD, SFA & MH)	All Other Types
Wt Avg	2.30	1.60	\$142	\$99
600	1.00	1.06	\$62	\$65
700	1.00	1.28	\$62	\$79
800	1.00	1.47	\$62	\$91
900	1.00	1.64	\$62	\$102
1,000	1.16	1.79	\$72	\$111
1,100	1.30	1.93	\$80	\$120
1,200	1.43	2.06	\$88	\$127
1,300	1.55	2.17	\$96	\$134
1,400	1.66	2.28	\$102	\$141
1,500	1.76	2.38	\$109	\$147
1,600	1.85	2.47	\$115	\$153
1,700	1.94		\$120	
1,800	2.03		\$125	
1,900	2.11		\$130	
2,000	2.18		\$135	
2,100	2.25		\$139	
2,200	2.32		\$144	
2,300	2.39		\$148	
2,400	2.45		\$152	
2,500	2.51		\$155	
2,600	2.57		\$159	
2,700	2.62		\$163	
2,800	2.68		\$166	
2,900	2.73		\$169	
3,000	2.78		\$172	
3,100	2.83		\$175	
3,200	2.87		\$178	
3,300	2.92		\$181	
3,400	2.96		\$184	
3,500	3.01		\$186	
3,600	3.05		\$189	
3,700	3.09		\$191	

MUNICIPAL FACILITIES IMPACT FEES

METHODOLOGY

The Municipal Facilities impact fees are based on an incremental expansion approach. Components of the fee include additional building space that will be expanded as the City's population and employment base increases. As illustrated in Figure 24, capital costs are allocated to both residential and nonresidential development. Residential factors are calculated on a per person basis, and converted to an impact fee amount per housing unit using average persons per housing unit by unit type. Nonresidential development fees are based on a capital cost per employee, where such costs are typically multiplied by the number of employees per 1,000 square feet of nonresidential floor area.

Figure 24. Municipal Facilities Impact Fee Methodology Chart



PROPORTIONATE SHARE FACTORS

The proportionate share factors shown in Figure 25 are used to allocate capital costs to residential and nonresidential development. The analysis is based on demographic data from the City of Boulder and the U.S. Census 2006 American Community Survey. For residential development, the proportionate share factor is based on estimated person hours of non-working residents, plus the non-working hours of resident workers. For resident workers, two-thirds of a day (i.e., 16 hours) is allocated to residential demand. Time spent at work (i.e., 8 hours) is allocated to nonresidential development. In 2006, the U.S. Census Bureau estimated that 36,309 City of Boulder residents also worked in the City. Therefore, total jobs include 60,659 non-resident workers that commute into Boulder for work. Based on estimated person hours, the cost allocation for residential development is 72 percent while nonresidential development accounts for 28 percent of the demand for municipal facilities.

Figure 25. Proportionate Share Factors for Municipal Facilities Impact Fees

	<u>Demand Units in 2006</u>	<u>Annualized Avg Hours per Day</u>	<u>Person Hours</u>
Residential			
Year-Round Population*	101,918		
Persons Not Working	51,796	24	1,243,104
Workers Living in Boulder**	50,122		
Residents Working in Boulder**	36,309	16	580,944
Residents Working Outside Boulder**	13,813	16	221,008
		Residential Subtotal	2,045,056
			72%
Nonresidential			
Jobs Located in Boulder*	96,968		
Residents Working in Boulder**	36,309	8	290,472
Non-Resident Workers in 2006	60,659	8	485,272
		Nonresidential Subtotal	775,744
			28%
		TOTAL	2,820,800

* City of Boulder estimates.

** Table B08008, 2006 American Community Survey.

MUNICIPAL FACILITIES LEVEL OF SERVICE STANDARDS AND COSTS

The incremental expansion methodology is used to calculate the Municipal Facilities impact fee. The first step of the analysis determines the current Level of Service (LOS) being provided to existing development. The second step involves determining the cost per person and job to provide this LOS.

Figure 26 lists the current inventory of municipal government space in the City of Boulder. As shown, the City currently has municipal facilities space totaling 70,748 square feet. The current value for general government buildings and contents is from the City's 2008 Property Schedule. Because the City anticipates having to acquire land in the future for Municipal Facilities, land and site improvement costs are included in the current costs. City staff estimates that 40 percent should be added to building costs to account for these costs. As indicated in Figure 26, the estimated current value is approximately \$16.8 million.

To derive the cost per demand unit, the current asset value is multiplied by the proportionate share factors for each type of land use and then divided by the respective demand units. For example, the cost per person of \$117.13 is derived by multiplying the current asset value (\$16,773,000) by 72%, then dividing by the current population estimate (103,100). The same approach is used for nonresidential development to derive a cost per job.

Figure 26. Municipal Facilities Level of Service Standards and Cost Factors

<i>Building</i>	<i>Building SF*</i>	<i>Cost/SF*</i>	<i>Current Value</i>
Municipal Building	23,657	\$237	\$5,597,000
Atrium	12,329	\$259	\$3,193,000
Park Central	20,910	\$241	\$5,035,000
New Britain	13,852	\$213	\$2,948,000
TOTAL	70,748		\$16,773,000

	Proportionate Share	2008 Demand Units	Cost per Demand Unit
Residential	72%	103,100 Population	\$117.13
Nonresidential	28%	97,750 Jobs	\$48.04

* Source: City Property Schedule (2008) for building and contents;
land and site improvements are included (additional 40% over building cost, per City of Boulder)

CREDIT EVALUATION

The City does not have any outstanding property tax-backed debt for municipal facility improvements, therefore no credit is required.

RESIDENTIAL IMPACT FEES FOR MUNICIPAL FACILITIES

Figure 27 provides the schedule of residential impact fee by finished floor area for residential development. Capital cost per person, multiplied by persons per housing unit, yields the impact fee for municipal facilities.

Figure 27. Municipal Facilities Maximum Supportable Residential Schedule

<i>Level Of Service</i>	<u>Per Person</u>
Office Buildings and Land Cost	\$117.13

<i>Square Feet</i> <i>(finished floor area)</i>	<i>Persons per Housing Unit</i>		<i>Impact Fee per Housing Unit</i>	
	<i>Single Family</i> <i>(SFD, SFA & MH)</i>	<i>All Other Types</i>	<i>Single Family</i> <i>(SFD, SFA & MH)</i>	<i>All Other Types</i>
Wt Avg	2.30	1.60	\$269	\$187
600	1.00	1.06	\$117	\$123
700	1.00	1.28	\$117	\$149
800	1.00	1.47	\$117	\$172
900	1.00	1.64	\$117	\$192
1,000	1.16	1.79	\$135	\$210
1,100	1.30	1.93	\$152	\$226
1,200	1.43	2.06	\$167	\$241
1,300	1.55	2.17	\$181	\$254
1,400	1.66	2.28	\$193	\$267
1,500	1.76	2.38	\$205	\$278
1,600	1.85	2.47	\$217	\$289
1,700	1.94		\$227	
1,800	2.03		\$237	
1,900	2.11		\$246	
2,000	2.18		\$255	
2,100	2.25		\$263	
2,200	2.32		\$272	
2,300	2.39		\$279	
2,400	2.45		\$287	
2,500	2.51		\$294	
2,600	2.57		\$300	
2,700	2.62		\$307	
2,800	2.68		\$313	
2,900	2.73		\$319	
3,000	2.78		\$325	
3,100	2.83		\$331	
3,200	2.87		\$336	
3,300	2.92		\$342	
3,400	2.96		\$347	
3,500	3.01		\$352	
3,600	3.05		\$357	
3,700	3.09		\$361	

NONRESIDENTIAL IMPACT FEES FOR MUNICIPAL FACILITIES

Figure 28 shows the schedule of maximum allowable impact fees for nonresidential development. For nonresidential land uses, such as a retail establishment, the number of employees per 1,000 square feet (2.86) is multiplied by the capital cost per employee (\$48.04), for an impact fee of \$0.13 per square foot.

Figure 28. Municipal Facility Maximum Supportable Nonresidential Schedule

<i>Level Of Service</i>	<i>Per Employee</i>
Office Buildings and Land Cost	\$48.04

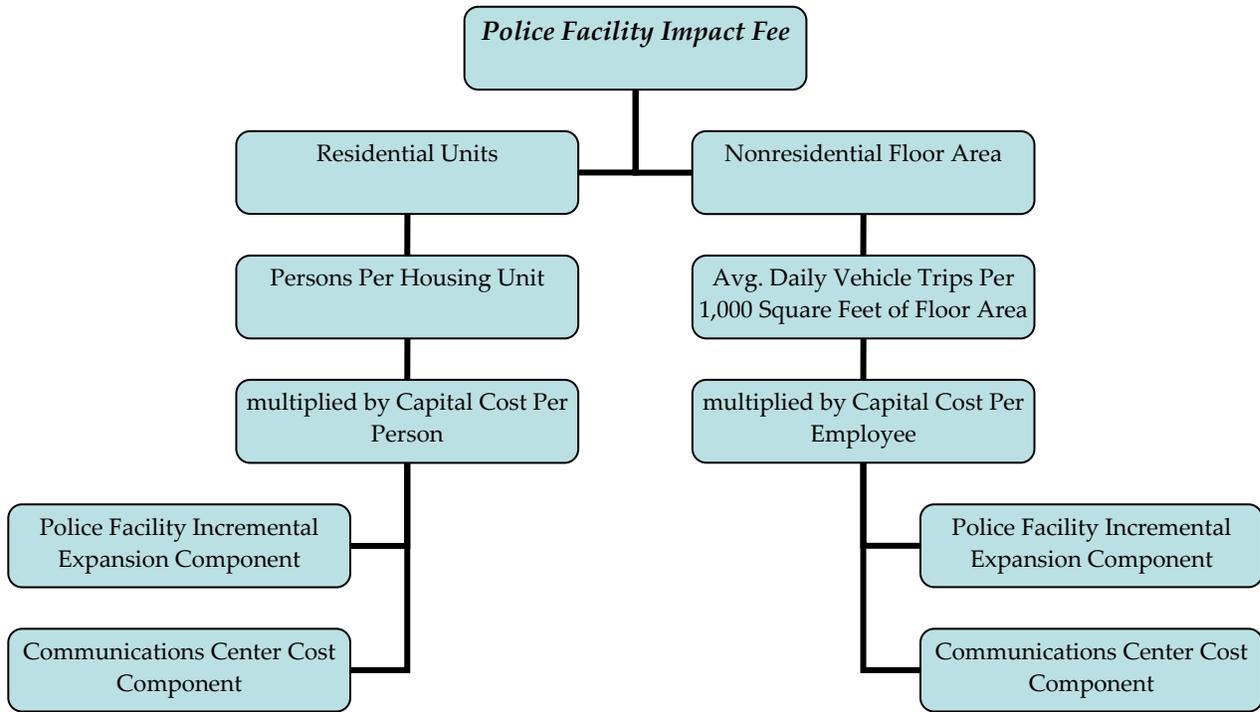
<i>ITE Code</i>	<i>Employees Per 1,000 Square Feet</i>	<i>Impact Fee per Square Foot</i>	
<i>Nonresidential (Floor Area)</i>			
820	Retail / Restaurant	2.86	\$0.13
770	Business Park	3.16	\$0.15
710	Office	3.91	\$0.18
610	Hospital	3.38	\$0.16
520	School	0.92	\$0.04
151	Mini-Warehouse	0.04	\$0.00
150	Warehousing	1.28	\$0.06
110	Light Industrial	2.31	\$0.11
<i>Other Nonresidential (Unique Demand Indicator)</i>			
620	Nursing Home (per bed)	0.36	\$17
565	Day Care (per student)	0.16	\$7
320	Lodging (per room)	0.44	\$21

POLICE IMPACT FEES

METHODOLOGY

The Police impact fee is calculated using a combination of the incremental expansion and plan based methodologies. An incremental expansion approach is used for Police Station space, while a plan based approach is used for planned Communication Center space. Because the Colorado State Impact Fee Act requires that infrastructure included in the fee calculation have a useful life of over 5 years, police cars are not eligible for impact fee funding. As shown in Figure 29, the Police impact fee uses different demand indicators for residential and nonresidential development. Residential impact fees are calculated on a per capita basis and then converted to a proportionate fee amount by type of housing, based on the number of persons per housing unit. For nonresidential impact fees, TischlerBise recommends using nonresidential vehicle trips as the best demand indicator for Police facilities. Trip generation rates are used for nonresidential development because vehicle trips are highest for commercial developments, such as shopping centers, and lowest for industrial/warehouse development. Office and institutional trip rates fall between the other two categories. This ranking of trip rates is consistent with the relative demand for Police services from nonresidential development. Other possible nonresidential demand indicators, such as employment or floor area, will not accurately reflect the demand for service. For example, if employees per thousand square feet were used as the demand indicator, Police impact fees would be too high for office and institutional development because offices typically have more employees per 1,000 square feet than retail uses. If floor area were used as the demand indicator, Police impact fees would be too high for industrial development.

Figure 29. Police Facilities Impact Fee Methodology Chart



PROPORTIONATE SHARE FACTORS

The preferred method for determining proportionate share factors is through an analysis of calls for Police service data by residential and nonresidential land use. Unfortunately, this data was not available for this impact fee study. Lacking calls for service data, the next best determiner of the demand for Police services is through functional population. This analysis is shown below in and is used to allocate capital costs to residential and nonresidential development.

The analysis is based on demographic data from the City of Boulder and the U.S. Census 2006 American Community Survey. For residential development, the proportionate share factor is based on estimated person hours of non-working residents, plus the non-working hours of resident workers. For resident workers, two-thirds of a day (i.e., 16 hours) is allocated to residential demand. Time spent at work (i.e., 8 hours) is allocated to nonresidential development. In 2006, the U.S. Census Bureau estimated that 36,309 City of Boulder residents also worked in the City. Therefore, total jobs include 60,659 non-resident

workers that commute into Boulder for work. Based on estimated person hours, the cost allocation for residential development is 72 percent while nonresidential development accounts for 28 percent of the demand for municipal facilities. Details are shown in Figure 30.

Figure 30. Proportionate Share Factors for Police Impact Fees

	<u>Demand Units in 2006</u>	<u>Annualized Avg Hours per Day</u>	<u>Person Hours</u>
Residential			
Year-Round Population*	101,918		
Persons Not Working	51,796	24	1,243,104
Workers Living in Boulder**	50,122		
Residents Working in Boulder**	36,309	16	580,944
Residents Working Outside Boulder**	13,813	16	221,008
		Residential Subtotal	2,045,056
			72%
Nonresidential			
Jobs Located in Boulder*	96,968		
Residents Working in Boulder**	36,309	8	290,472
Non-Resident Workers in 2006	60,659	8	485,272
		Nonresidential Subtotal	775,744
			28%
		TOTAL	<u><u>2,820,800</u></u>

* City of Boulder estimates.

** Table B08008, 2006 American Community Survey.

POLICE FACILITIES LEVEL OF SERVICE STANDARDS AND COSTS

The Police impact fee is calculated using the incremental expansion and plan based methodologies. The incremental expansion approach is used for Police station space and administration and a plan based approach is used for planned Communications Systems improvements. For the incremental component, the first step of the analysis determines the current LOS being provided to existing development. The second step involves determining the cost per person and per nonresidential vehicle trip to provide this LOS.

The top portion of Figure 31 lists the current inventory of Police space in the City of Boulder. As shown, the City currently has Police space totaling 69,178 square feet. To determine the total current asset value for Police space, City of Boulder staff provided current values for each facility included in the inventory through the 2008 City Property Schedule. Because the City anticipates having to acquire land in the future for Police facilities, land and site

improvement costs are included in the current costs. City staff estimates that 40 percent should be added to building costs to account for these costs. As indicated in Figure 31, the estimated current value is approximately \$17.3 million.

To derive the cost per demand unit for the incremental portion of the fee, the current asset value (\$17,268,000) is multiplied by the proportionate share factors for each type of land use and then divided by the respective demand units for each. For example, the cost per person of \$120.59 is derived by multiplying the current asset value (\$17,268,000) by 72 percent, then dividing by the current population estimate (103,100). The same approach is used for nonresidential development to derive a cost per trip.

For the Communications System Improvements, a plan-based methodology is used and is based on the estimated cost less committed and earmarked funds from the federal government and 911 fees. The improvements are anticipated to serve development through 2030. Based on the net capital cost to the City of \$449,000 and projected population and vehicle trips to nonresidential development in 2030, the per capita cost is \$2.72 and the cost per trip is \$0.35.

Figure 31. Police Facilities Level of Service Standards and Cost Factors

Incremental Expansion Cost of Police Buildings

	Bldg Sq Ft	Cost per SF*	Current Value
Headquarters	47,115	\$290	\$13,654,000
Training Ctr / Firing Range Addition	16,000	\$199	\$3,181,000
Police Storage (only building cost)	4,763	\$91	\$433,000
Downtown Mall Annex	850	leased	
University Hill Annex	450	leased	
TOTAL			69,178
			\$17,268,000

	Proportionate Share	2008 Demand Units	Cost per Demand Unit
Residential	72%	103,100 persons	\$120.59
Nonresidential	28%	295,181 nonres trips	\$16.37

* Source: City Property Schedule (2008) for building and contents; land and site improvements are included (additional 40% over building cost, per City of Boulder)

Plan-Based Cost of Communications System Improvements

Boulder Police Communications Center**	\$1,900,000
Less BRE TSA and DHS Grant Funding**	(\$1,451,000)
Net Capital Cost	
\$449,000	

	Proportionate Share	2030 Demand Units	Cost per Demand Unit
Residential	72%	118,500 persons	\$2.72
Nonresidential	28%	354,577 nonres trips	\$0.35

** Source: Boulder Police Department

CREDIT EVALUATION

At present, the City of Boulder does not have any outstanding property-tax backed bonded debt related to the construction of Police facilities. Therefore, a credit for existing bond financing is not applicable to this impact fee.

MAXIMUM ALLOWABLE RESIDENTIAL IMPACT FEE FOR POLICE

Figure 32 provides a summary of the level-of-service standards used to calculate the Police impact fees. As discussed previously, police impact fees are calculated for both residential and nonresidential land uses. The capital cost per demand unit for residential land uses is \$123.31 per person. The number of persons per housing unit (by type of size) is discussed further in the Appendix.

Figure 32. Police Impact Fee Schedule for Residential Development

<i>Police Facilities Level Of Service</i>	<u>Per Person</u>
Headquarters & Annex Cost	\$120.59
Communications System Cost	\$2.72
Net Capital Cost	\$123.31

<i>Square Feet (finished floor area)</i>	<i>Persons per Housing Unit</i>		<i>Impact Fee per Housing Unit</i>	
	<i>Single Family (SFD, SFA & MH)</i>	<i>All Other Types</i>	<i>Single Family (SFD, SFA & MH)</i>	<i>All Other Types</i>
Wt Avg	2.30	1.60	\$283	\$197
600	1.00	1.06	\$123	\$130
700	1.00	1.28	\$123	\$157
800	1.00	1.47	\$123	\$181
900	1.00	1.64	\$123	\$202
1,000	1.16	1.79	\$143	\$221
1,100	1.30	1.93	\$160	\$238
1,200	1.43	2.06	\$176	\$253
1,300	1.55	2.17	\$190	\$267
1,400	1.66	2.28	\$204	\$281
1,500	1.76	2.38	\$216	\$293
1,600	1.85	2.47	\$228	\$304
1,700	1.94		\$239	
1,800	2.03		\$249	
1,900	2.11		\$259	
2,000	2.18		\$269	
2,100	2.25		\$277	
2,200	2.32		\$286	
2,300	2.39		\$294	
2,400	2.45		\$302	
2,500	2.51		\$309	
2,600	2.57		\$316	
2,700	2.62		\$323	
2,800	2.68		\$330	
2,900	2.73		\$336	
3,000	2.78		\$342	
3,100	2.83		\$348	
3,200	2.87		\$354	
3,300	2.92		\$360	
3,400	2.96		\$365	
3,500	3.01		\$370	
3,600	3.05		\$375	
3,700	3.09		\$380	

MAXIMUM ALLOWABLE NONRESIDENTIAL IMPACT FEES FOR POLICE

Figure 33 contains a schedule of the Police impact fees for nonresidential development. For example, a retail establishment generates an average of 86.56 vehicle trips per 1,000 square feet on an average weekday. To account for pass-by trips, the trip adjustment rate of 31 percent is multiplied by the capital cost per nonresidential vehicle trip (\$16.72), for an impact fee of \$0.44 per square foot.

Figure 33. Police Maximum Nonresidential Schedule

<i>Police Facilities Level Of Service</i>	<i>Per Employee</i>
Headquarters & Annex Cost	\$16.37
Communications System Cost	\$0.35
Net Capital Cost	\$16.72

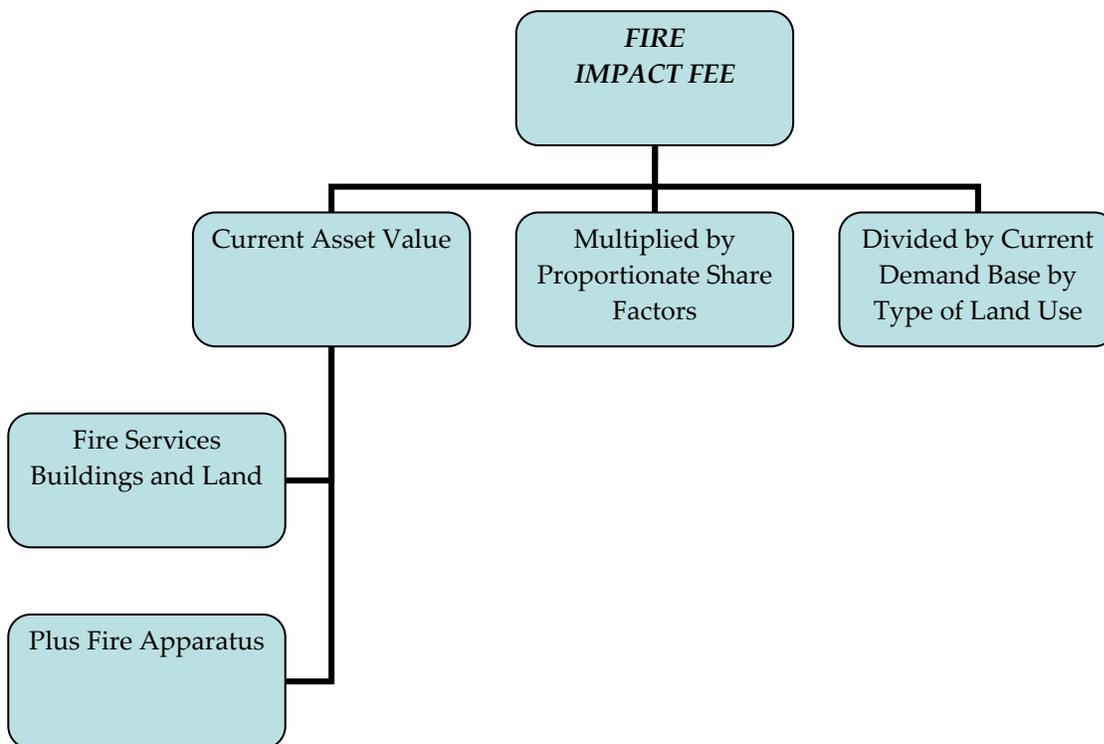
<i>ITE Code</i>	<i>Wkdy Veh Trip Ends per 1,000 Sq Ft</i>	<i>Trip Adjustment Factors</i>	<i>Impact Fee per Square Foot</i>	
<i>Nonresidential (Floor Area)</i>				
820	Retail / Restaurant	86.56	31%	\$0.44
770	Business Park	12.76	50%	\$0.10
710	Office	18.35	50%	\$0.15
610	Hospital	17.57	50%	\$0.14
520	School	14.49	33%	\$0.07
151	Mini-Warehouse	2.50	50%	\$0.02
150	Warehousing	4.96	50%	\$0.04
110	Light Industrial	6.97	50%	\$0.05
<i>Other Nonresidential (Unique Demand Indicator)</i>				
620	Nursing Home (per bed)	2.37	50%	\$19
565	Day Care (per student)	4.48	24%	\$17
320	Lodging (per room)	5.63	50%	\$47

FIRE IMPACT FEES

The City of Boulder Fire impact fee is based on the incremental expansion cost of Fire Services facilities and Fire apparatus. This methodology will allow for the greatest flexibility, as the City plans to expand Fire facilities in the next few years, but at this time is not sure if this will take the form of an additional station or a relocation and expansion of an existing station. Due to requirement of the Colorado Impact Fee Act that capital facilities have useful lives of over five years, only heavy apparatus (e.g., engines, rescue trucks) is included.

As shown in Figure 34, the Fire impact fee is calculated using proportionate share factors that are based on actual calls for service to specific types of land uses. Because of the availability of detailed calls for service data by type of land use, the calculation of the Fire impact fees is slightly different from the other categories. For example, Fire calls for service data indicates that 24.7 percent of Fire calls are to single family housing units. Therefore, 24.7 percent of the Fire costs are allocated to single family housing units, which are then divided by the current number of single family housing units to determine the impact fee.

Figure 34. Fire Impact Fee Methodology Chart



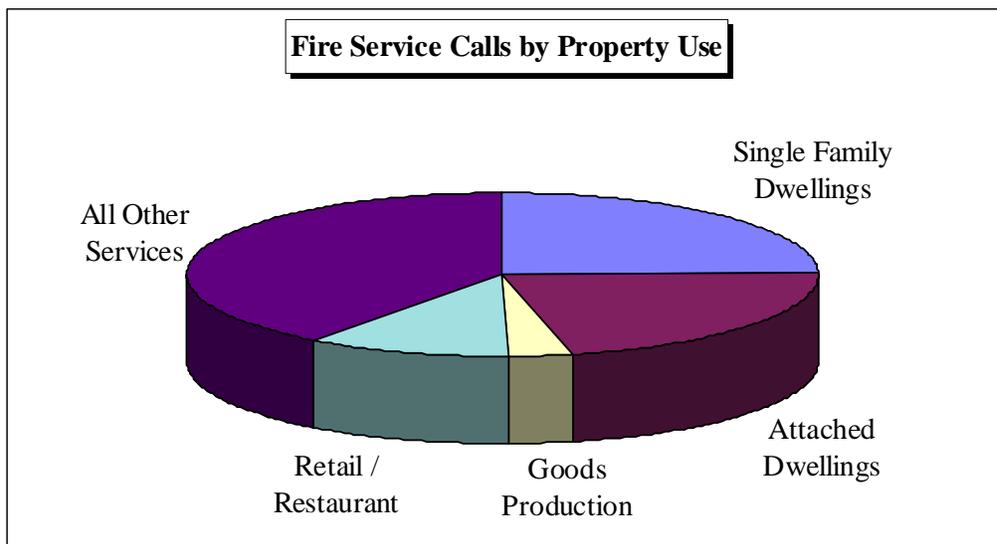
PROPORTIONATE SHARE FACTORS

The most accurate source for determining demand for Fire services and facilities is calls for service generated by residential and nonresidential land uses. The City provided data on Fire call incidents by land use for calendar year 2007. TischlerBise used this call data to determine the proportionate share factors shown in Figure 35. This data indicated that the City responded to 6,116 calls to known land uses. The data further indicates the number and percentage of calls to specific land uses. For example, 656 calls were to retail/restaurant uses, which represent 10.7 percent of total calls. Proportionate share factors are shown below.

Figure 35. Fire Proportionate Share Factors

	<i>Incidents</i>	
Single Family Dwellings	1,510	24.7%
Attached Dwellings	1,320	21.6%
Goods Production	205	3.4%
Retail / Restaurant	656	10.7%
All Other Services	2,425	39.7%
Subtotal	6,116	

Source: Boulder Fire Department calls by property use in 2007.



FIRE LEVEL OF SERVICE STANDARDS AND COSTS*Fire Service Facilities Incremental Expansion Cost Component*

As discussed above, the Fire impact fees are derived using the incremental expansion approach for buildings and land, based on the current 2008 level of service. As shown in Figure 36, the City of Boulder has seven fire stations, headquarters, and a training center. The costs for the stations and headquarters are from the 2008 City Property Schedule. Also because the City anticipates having to acquire land in the future for Fire facilities, land and site improvement costs are included at 40 percent of building cost, per the City. The Training Center cost shown below reflects the current cost to the City to replace the existing facility, which is slated to be relocated from its existing site to a new location. It should be noted that the relocated facility (and cost) does not reflect any excess capacity to accommodate new growth, and therefore represents the City's current level of service. As Figure 36 indicates, the City currently has 49,823 square feet of Fire Services space. The current value of the existing fire stations, including land and site improvements, is estimated at \$12,580,613.

Figure 36. Fire Station Inventory and Costs

	<i>Sq Ft</i>	<i>Current Value*</i>
Station One	7,941	\$1,903,626
Station Two	4,757	\$936,188
Station Three	6,160	\$1,060,018
Station Four	3,498	\$688,572
Station Five	3,716	\$776,558
Station Six	3,435	\$810,629
Station Seven	5,081	\$1,286,872
Fire Headquarters	5,235	\$1,518,150
Training Center	10,000	\$3,600,000
TOTAL	49,823	\$12,580,613

** Source: City Property Schedule (2008) for building and contents; land and site improvements are included (additional 40% over building cost, per City of Boulder)*

Fire Apparatus Incremental Expansion Component

The Fire impact fees also use an incremental expansion approach for Fire apparatus, based on the current 2008 level of service. Current replacement costs for the City's inventory of Fire apparatus (with a minimum 5-year useful life) are shown in Figure 37 and were provided by the City. As shown in Figure 37, the estimated current value totals \$8.2 million.

Figure 37. Fire Apparatus Inventory and Costs

<i>Item</i>	<i>Units</i>	<i>\$/Unit</i>	<i>Current Value</i>
Fire Engines (Pumpers)	7	\$585,755	\$4,100,285
Fire Engines (Telesquirts)	3	\$770,000	\$2,310,000
Ladder Truck	1	\$900,000	\$900,000
Rescue Truck	1	\$195,000	\$195,000
Wild-Land Truck (Type 6)	2	\$100,000	\$200,000
Wild-Land Truck (Type 3)	2	\$250,000	\$500,000
TOTAL	16	\$512,830	\$8,205,285

Source: City of Boulder Fire Department

CREDIT EVALUATION

At present, the City of Boulder does not have any outstanding property-tax backed bonded debt related to the construction of Fire facilities. Therefore, a credit for existing bond financing is not applicable to this impact fee.

SUMMARY OF FACTORS FOR FIRE IMPACT FEE

Factors used to calculate Fire impact fees are shown in the boxed area of Figure 38. Current values for Fire Services Buildings and Apparatus are summarized at the top of the figure. Proportionate share factors by type of land use as described earlier are summarized in the middle section followed by current demand base data for housing units by type and nonresidential floor area by type of development.

Figure 38. Fire Impact Fee Level-of-Service Standard Summary

		<i>Standards:</i>	
Current Value			
Fire Services Buildings & Land		\$12,580,000	
Fire Apparatus		\$8,205,000	
Total		\$20,785,000	
Proportionate Share Factors			
Single Family (SFD, SFA & MH)		24.7%	
All Other Residential		21.6%	
Goods Production		3.4%	
Retail / Restaurant		10.7%	
All Other Services		39.7%	
Demand Base in 2008			
		Housing Units	Persons per HU
Single Family		25,445	2.3
All Other		19,440	1.6
		Square Feet	Employees per Sq Ft
Goods Production		16,090,000	0.00128
Retail / Restaurant		6,160,000	0.00286
All Other Services		25,820,000	0.00231
Maximum Supportable Impact Fee			
<u>Residential</u>		<i>Per Housing Unit</i>	<i>Per Person</i>
Single Family (SFD, SFA & MH)		\$201	\$87.39
All Other Types		\$230	\$143.75
<u>Nonresidential</u>		<i>Per Square Foot</i>	<i>Per Employee</i>
Goods Production		\$0.04	\$31.25
Retail / Restaurant		\$0.36	\$125.87
All Other Services		\$0.31	\$134.19

MAXIMUM ALLOWABLE IMPACT FEES FOR FIRE

Figure 39, shows the schedule of maximum allowable fire impact fees for residential development. To determine the cost per demand unit, total estimated costs are multiplied by the appropriate proportionate share factors by type of land use and then divided by the applicable demand factor. For example for a single family unit, the total current value of Fire facilities of \$20,785,000 is multiplied by the single family proportionate share of 24.7 percent and then divided by the current estimated number of single family units (25,445) for a cost per single family unit of \$201, or \$87.39 per person.

Figure 39. Fire Impact Fee Schedule for Residential Development

<i>Fire Facilities Level Of Service</i>	<u>Per Person</u>
Single Family (SFD, SFA, & MH)	\$87.39
All Other Types	\$143.75

<i>Square Feet</i> <i>(finished floor area)</i>	<i>Persons per Housing Unit</i>		<i>Impact Fee per Housing Unit</i>	
	<i>Single Family</i> <i>(SFD, SFA & MH)</i>	<i>All Other Types</i>	<i>Single Family</i> <i>(SFD, SFA & MH)</i>	<i>All Other Types</i>
Wt Avg	2.30	1.60	\$200	\$230
600	1.00	1.06	\$87	\$151
700	1.00	1.28	\$87	\$183
800	1.00	1.47	\$87	\$211
900	1.00	1.64	\$87	\$236
1,000	1.16	1.79	\$101	\$257
1,100	1.30	1.93	\$113	\$277
1,200	1.43	2.06	\$124	\$295
1,300	1.55	2.17	\$135	\$312
1,400	1.66	2.28	\$144	\$327
1,500	1.76	2.38	\$153	\$342
1,600	1.85	2.47	\$161	\$355
1,700	1.94		\$169	
1,800	2.03		\$177	
1,900	2.11		\$184	
2,000	2.18		\$190	
2,100	2.25		\$196	
2,200	2.32		\$202	
2,300	2.39		\$208	
2,400	2.45		\$214	
2,500	2.51		\$219	
2,600	2.57		\$224	
2,700	2.62		\$229	
2,800	2.68		\$234	
2,900	2.73		\$238	
3,000	2.78		\$242	
3,100	2.83		\$247	
3,200	2.87		\$251	
3,300	2.92		\$255	
3,400	2.96		\$259	
3,500	3.01		\$262	
3,600	3.05		\$266	
3,700	3.09		\$269	

The cost per employee for nonresidential development, multiplied by the number of employees per demand unit, yields the fire impact by type of nonresidential development. For example, retail/restaurant development averages 2.86 employees per 1,000 square feet of floor area. At a capital cost of \$125.87 per employee for fire infrastructure, the resulting impact fee is \$0.35 per square foot of floor area, as shown in Figure 40.

Figure 40. Fire Impact Fee Schedule for Nonresidential Development

<i>Fire Facilities Level Of Service</i>	<i>Per Employee</i>
Goods Production	\$31.25
Retail / Restaurant	\$125.87
All Other Services	\$134.19

<i>ITE Code</i>	<i>Employees Per 1,000 Square Feet</i>	<i>Impact Fee per Square Foot</i>	
<i>Nonresidential (Floor Area)</i>			
820	Retail / Restaurant	2.86	\$0.35
770	Business Park	3.16	\$0.09
710	Office	3.91	\$0.52
610	Hospital	3.38	\$0.45
520	School	0.92	\$0.12
151	Mini-Warehouse	0.04	\$0.00
150	Warehousing	1.28	\$0.04
110	Light Industrial	2.31	\$0.07
<i>Other Nonresidential</i>			
			<i>Impact Fee per Demand Indicator</i>
620	Nursing Home (per bed)	0.36	\$48
565	Day Care (per student)	0.16	\$21
320	Lodging (per room)	0.44	\$59

IMPLEMENTATION AND ADMINISTRATION

All costs in the impact fee calculations are given in current dollars with no assumed inflation rate over time. Necessary cost adjustments can be made as part of the recommended annual evaluation and update of impact fees. One approach is to adjust for inflation in construction costs by means of an index specific to construction as opposed to the consumer price index (CPI), which is more general in nature. TischlerBise recommends using the Marshall Swift Valuation Service, which provides comparative cost multipliers for various geographies and types of construction. The multipliers can be applied against the calculated impact fee. If cost estimates change significantly the City should redo the fee calculations.

There are certain accounting procedures that should be followed by the City. For example, monies received should be placed in a separate fund and accounted for separately and may only be used for the purposes authorized in the impact fee ordinance. Interest earned on monies in the separate fund should be credited to the fund.

It should be noted that as discussed in the Library chapter, it is TischlerBise's recommendation that the cost recovery component of the Library fee be eliminated once the remaining outstanding debt on the most recent library capacity expansion is retired (anticipated to be an additional three years). However, if the City decides to construct an additional branch or expand existing facilities, the impact fee methodology and amount should be revised to reflect this change.

CREDITS AND REIMBURSEMENTS

Future Revenue Credits

There are three basic approaches used to calculate impact fees and each is linked to different credit methodology. The first major type of impact fee method is a cost recovery approach. This method is used for facilities that have adequate capacity to accommodate new development for at least a five to six year time frame. The rationale for the cost recovery is that new development is paying for its share of the useful life or remaining capacity of the existing facility. When using a cost recovery method, it is important to determine whether new development has already contributed toward the cost of existing public facilities. As described in this report, outstanding debt exists for Libraries where a cost recovery approach is used, therefore a credit is necessary and include in the fee calculation.

A second basic approach used to calculate impact fees is the incremental expansion cost method. This method documents current factors and is best suited for public facilities that will be expanded incrementally in the future. Because new development will provide front-end funding of infrastructure, there is a potential for double payment of capital costs due to future principal payments on existing debt for public facilities. A credit is not necessary for interest payments if interest costs are not included in the impact fees. This type of credit is necessary and calculated for Parks and Recreation and Human Services because there is outstanding debt for capacity expansions calculated under the incremental approach.

A third basic approach used to calculate impact fees is the plan-based method. This method is based on future capital improvements needed to accommodate new development. The plan-based method may be used for public facilities that have commonly accepted service delivery factors to determine the need for future projects or the jurisdiction plans to significantly increase the current level of service standards. If a plan-based approach is used to derive impact fees, the credit evaluations should focus on future dedicated revenues that will fund growth-related capital improvements. This type of credit is not necessary for the fees calculated herein.

Site-Specific Credits

If a developer constructs a system improvement that was included in the fee calculations, it will be necessary to either reimburse the developer or provide a credit against the fees in the area benefiting from the system improvement. Project improvements normally required as part of the development approval process are not eligible for credits or offsets against impact fees. Specific policies and procedures related to site-specific credits or developer reimbursements for system improvements should be addressed in the ordinance that establishes the City's fees.

Based on TischlerBise's experience, it is better for the City to establish a reimbursement agreement with the developer that constructs a system improvement rather than provide a credit off of the fee. The latter is often more difficult to administer because it creates unique fees for specific geographic areas. The reimbursement agreement should be limited to a payback period of no more than ten years and the City should not pay interest on the outstanding balance. The developer must provide sufficient documentation of the actual cost incurred for the system improvement. The City of Boulder should only agree to pay the lesser of the actual construction cost or the estimated cost used in the impact fee analysis. If the City pays more than the cost used in the fee analysis, there will be insufficient fee revenue. Reimbursement agreements should only obligate the City to reimburse developers annually according to actual fee collections from the benefiting area.

COLLECTION AND EXPENDITURE ZONES

The reasonableness of impact fees is determined in part by their relationship to the local government's burden to provide necessary public facilities. The need to show a benefit usually requires communities to evaluate collection and expenditure zones for public facilities that have distinct geographic service areas. Consideration of zones will enable the City to show that developments paying fees are benefiting from the provision of additional capital improvements.

TischlerBise recommends a citywide fee for all impact fee calculated herein. All improvements covered under the impact fee program are derived based on citywide demand and will have a citywide benefit.

APPENDIX A. DEMOGRAPHIC DATA

In this Appendix, TischlerBise documents the demographic data and development projections used in the Impact Fee / Development Excise Tax study for the City of Boulder. Although long-range projections are necessary for planning capital improvements, a shorter time frame of five years is critical for the impact fees analysis. Infrastructure standards are calibrated using 2008 data and the first projection year for the cash flow model will be 2009. The City of Boulder's fiscal year begins January 1st.

POPULATION AND HOUSING CHARACTERISTICS

TischlerBise recommends the use of two residential categories in the impact fee calculations: 1) Single Family (detached and attached) and 2) All Other housing types. Differentiating impact fees by type of housing helps make the fees proportionate to the demand for public facilities. Single Family housing units are normally larger and have more persons than All Other housing types. According to the U.S. Census Bureau's American Community Survey data for 2006, Single Family housing in Boulder averages 2.3 persons per unit (see the rows with yellow shading in Figure A1). All Other housing averages 1.6 persons per unit (see the rows with tan shading in the table below).

Impact fees often use per capita standards and persons per housing unit or persons per household to derive proportionate-share fee amounts. When persons per housing unit multipliers are used in the fee calculations, infrastructure standards are derived using year-round population. When persons per household multipliers are used in the fee calculations, the impact fee methodology assumes all housing units will be occupied, thus requiring seasonal or peak population to be used when deriving infrastructure standards. In the City of Boulder impact fee will be derived using year-round population and the average number of persons per housing unit.

Figure A1. Persons per Housing Unit

<i>House Type Demographics</i>				<i>Housing</i>	<i>Persons Per</i>	
	<i>Persons</i>	<i>Hshlds</i>	<i>PPH</i>	<i>Units</i>	<i>Housing Unit</i>	<i>Hsg Mix</i>
Single Family (SFD, SFA & MH)	54,948	21,776	2.52	23,678	2.3	57%
All Other Types	28,671	16,097	1.78	17,651	1.6	43%
Group Quarters	8,855					
Total	92,474	37,873		41,329		

Source: U.S. Census Bureau, 2006 American Community Survey.

AVERAGE NUMBER OF PERSONS BY SIZE OF HOUSING UNIT

To derive impact fees by floor area of housing requires a linkage of demographic data from the U.S. Census Bureau and house size data from the Boulder County Assessor, with number of bedrooms as the common connection between the two databases. Number of persons by bedroom range may be determined from survey data provided by the U.S. Census Bureau. The City of Boulder is in Public Use Microdata Area (PUMA) 00803. PUMAs are areas of roughly 100,000 persons for which the Census Bureau makes available a 5% sample of responses to the long-form census questionnaire. TischlerBise used this data to prepare persons per housing unit multipliers that vary by type of housing and number of bedrooms. Because the number of persons increases with the number of bedrooms, this approach may be used to make impact fees more “progressive” with higher impact fees imposed on larger housing units and lower impact fees on smaller, more affordable housing.

The tables below indicate persons per housing unit by type of housing and number of bedrooms. Results for Single Family housing are shown in Figure A2, with Figure A3 indicating average persons by bedroom range for All Other housing types. To minimize sample size problems, TischlerBise aggregated bedroom ranges.

Figure A2. Persons per Single Family Housing Unit by Bedroom Range

Single Family Dwellings
Boulder, Colorado

	<i>0-2 Bdrms</i>	<i>3 Bdrms</i>	<i>4 Bdrms</i>	<i>5+ Bdrms</i>	<i>Wt Avg</i>
Single Family	1.63	2.15	2.73	2.95	2.32

Source: Data for Colorado PUMA 00803 (includes SFD, SFA and MH)
2006 American Community Survey, Public Use Microdata Sample.

Figure A3. Average Persons by Bedroom Range for All Other Housing Types

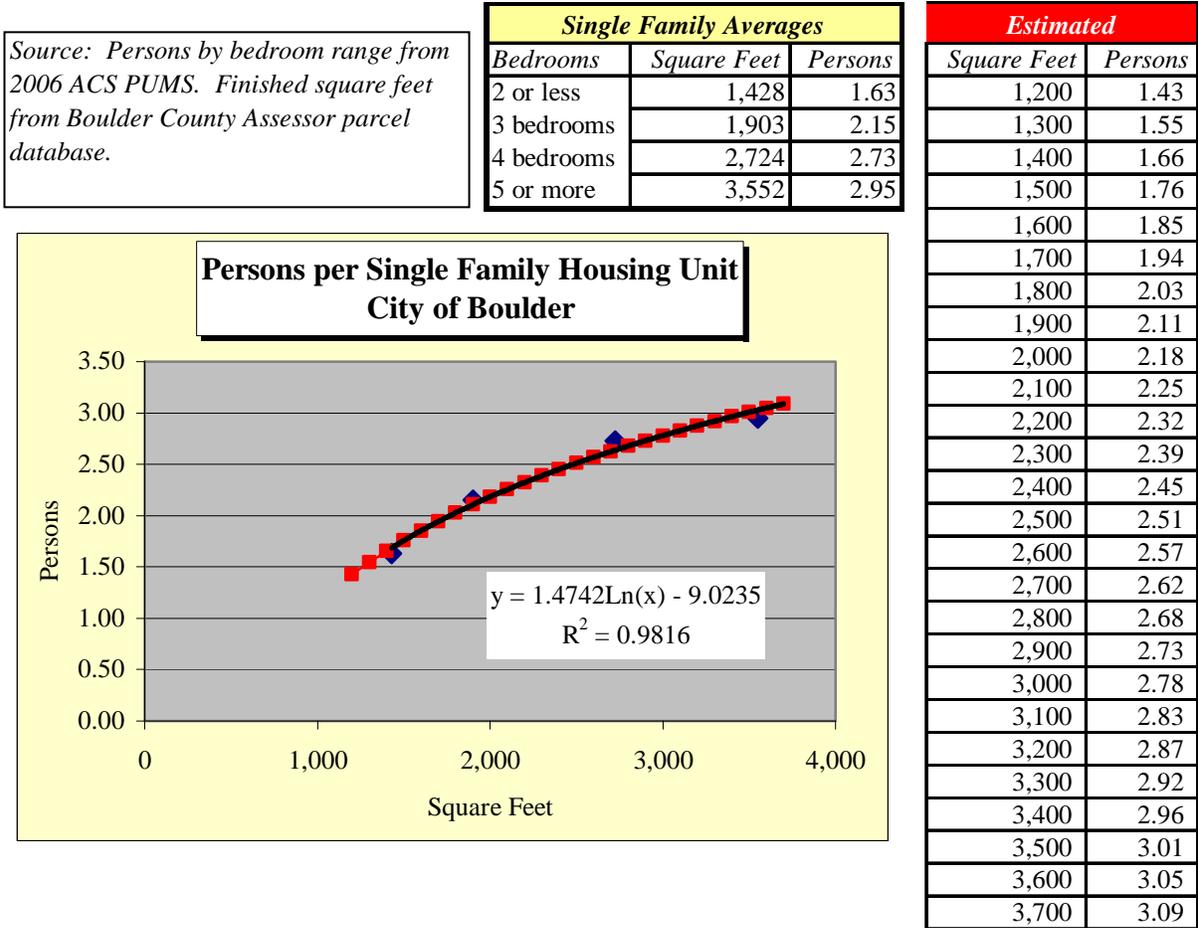
All Other Dwellings
Boulder, Colorado

	0-1 Bdrm	2 Bdrms	3+ Bdrms	Wt Avg
2+ Units per Structure	1.20	1.79	2.46	1.62

*Source: Data for Colorado PUMA 00803 (all other housing types)
2006 American Community Survey, Public Use Microdata Sample.*

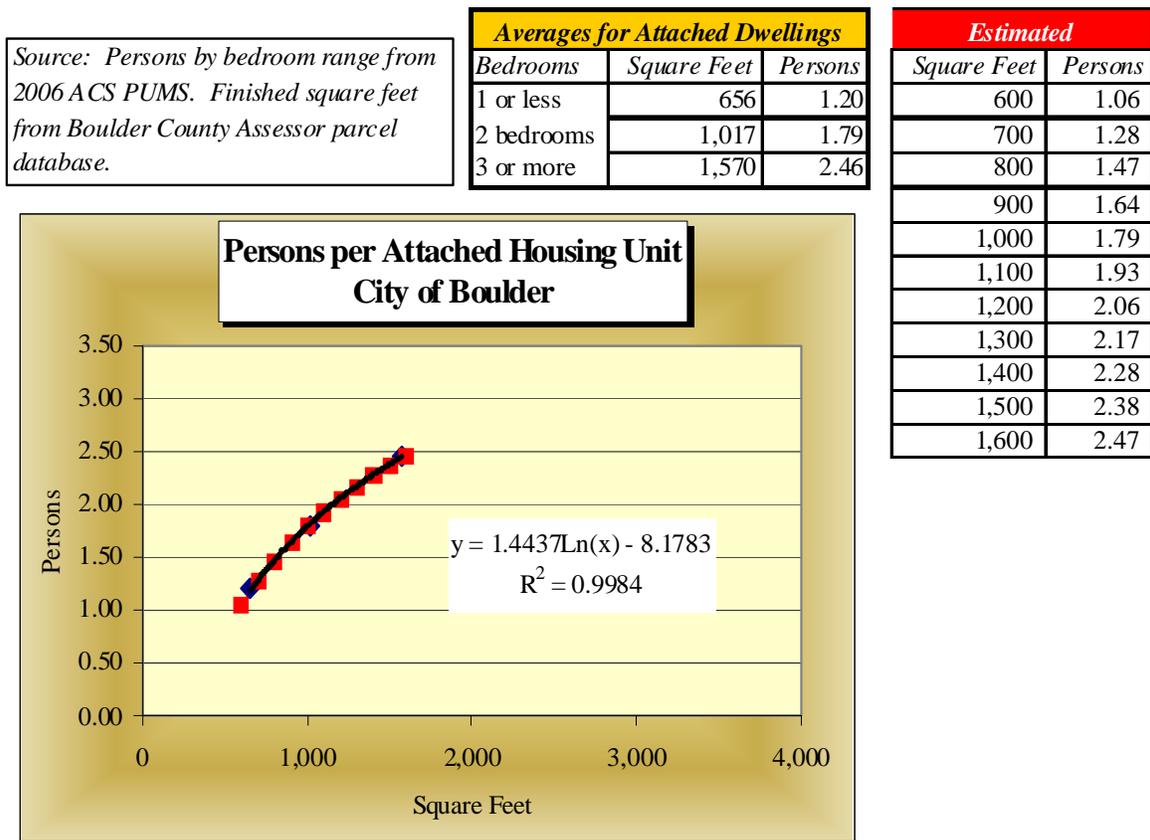
Using key variables from the County Assessor's parcel database, TischlerBise determined the average finished floor area by type of housing and bedroom range. For Single Family housing, average floor area and number of persons by bedroom range are plotted in Figure A4, with a logarithmic trend line derived from the four actual averages in the City of Boulder. Using the trend line formula shown in the chart, TischlerBise derived the estimated average number of persons by size of Single Family housing, using 100 square foot intervals. For the purpose of impact fees in City of Boulder if the City wishes to assess fees by size of unit, TischlerBise recommends a minimum fee based on a Single Family unit size of 1,200 square feet and a maximum fee based on a Single Family unit size of 3,700 square feet of finished floor area.

Figure A4. Average Persons by Floor Area of Single Family Housing



For All Other housing types, the average floor area and number of persons by bedroom range are plotted in Figure A5. A logarithmic trend line was determined from the three actual averages in the City of Boulder. Using the trend line formula shown in the chart, TischlerBise derived the estimated average number of persons by unit size, using 100 square feet intervals. For All Other housing types, TischlerBise recommends a minimum fee based on a unit size of 600 square feet and a maximum fee based on a unit size of 1,600 square feet of finished floor area, if the City wishes to assess fees by size of unit.

Figure A5. Average Persons by Floor Area of Attached Housing



RECENT RESIDENTIAL CONSTRUCTION

Figure A6 indicates City of Boulder 2006 estimates for year-round residents and housing units. From 2000 to 2006, Boulder added an average of 308 housing units per year. The chart at the bottom of Figure A6 indicates the estimated number of housing units added by decade in City of Boulder. If the recent rate of housing construction continues, the first decade of the

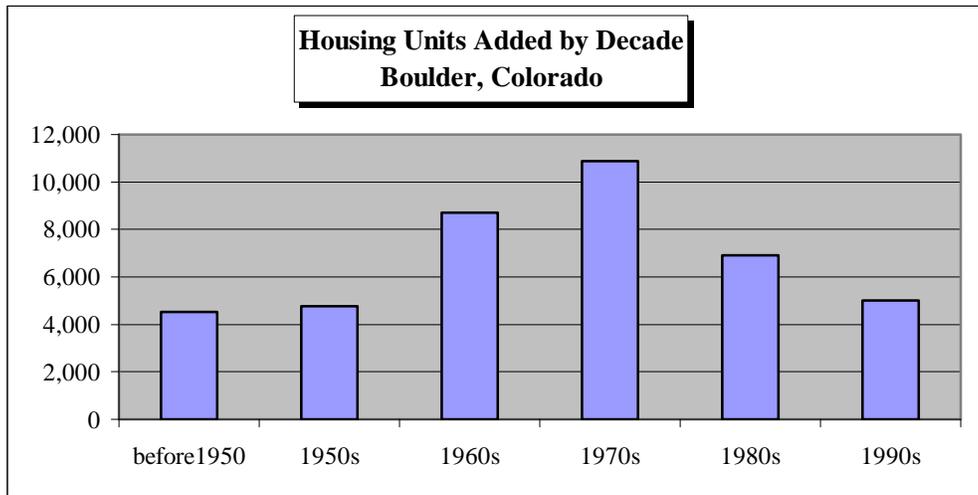
21st century will experience an increase of approximately 3,000 housing units, which is less than the number of housing units added during the 90s.

Figure A6. City of Boulder Housing Units and Population in 2006

Boulder, Colorado	
Estimated Population in 2006*	101,918
Housing Units 2000*	42,740
New Housing Units 2000-2006	1,848
Housing Units in 2006*	44,588

From 2000 to 2006, Boulder added approximately 308 housing units per year.

* City of Boulder estimates.



Source: Units by decade based on Table H34, SF3 Census 2000, U.S. Census Bureau.

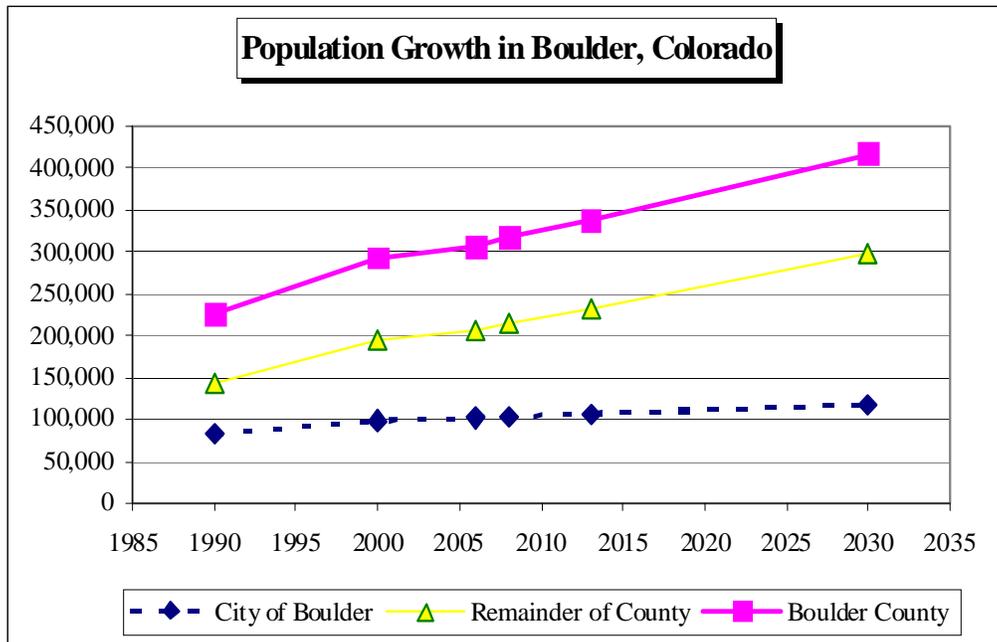
POPULATION PROJECTIONS

The impact fee study will use population and job projections as the key growth indicators, from which housing unit and nonresidential floor area data will be derived. According to the City’s 2008 Community Data Report, Boulder will be home to 118,500 residents by the year 2030 (Area I only). In that same year, Boulder County is expected to have a population of 417,517 (Woods & Poole Economics 2007). As shown in Figure A7, Boulder’s population share is expected to decrease from 33% of total county population in 2006, to 28% by the year 2030.

Figure A7. Population Growth in Boulder

	1990	2000	2006	2008	2013	2030
Boulder County	226,374	293,878	308,110	317,358	338,739	417,517
City of Boulder	83,312	99,093	101,918	103,100	106,414	118,500
Remainder of County	143,062	194,785	206,192	214,258	232,325	299,017
City of Boulder Share	37%	34%	33%	32%	31%	28%

Source: Boulder County from Woods & Poole Economics (2007). City of Boulder 1990 from U.S. Census Bureau; 2000 and 2006 estimates from City of Boulder. City of Boulder 2008 and 2030 (Area I) from 2008 Community Data Report.



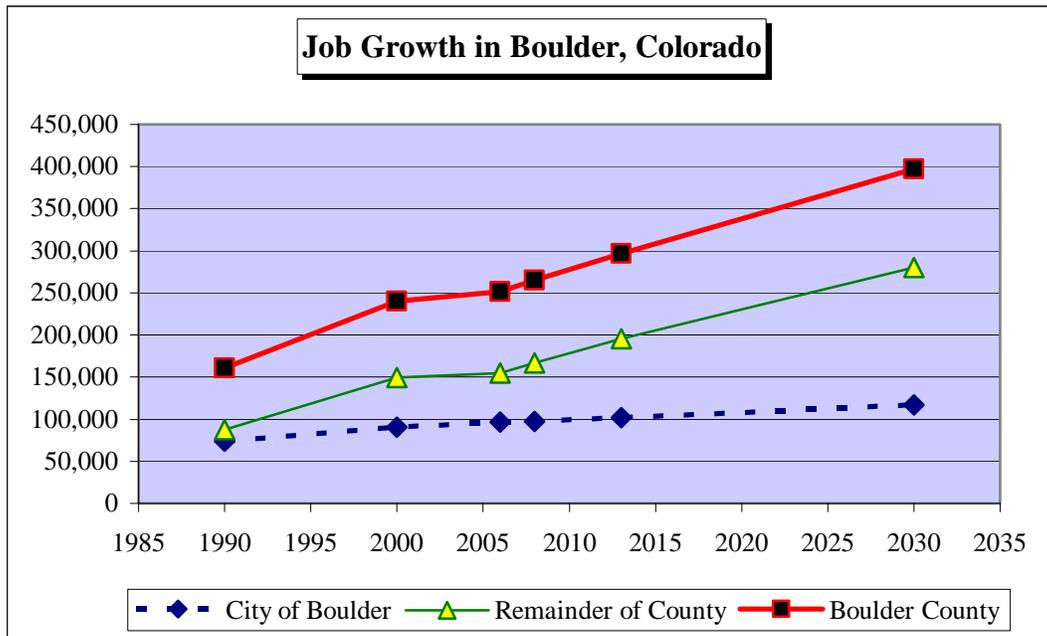
JOBS BY PLACE OF WORK

In addition to data on residential development, the calculation of impact fees requires data on nonresidential development. TischlerBise uses the term “jobs” to refer to employment by place of work. Similar to the above population share discussion, Boulder’s capture ratio of countywide jobs is shown in Figure A8. Boulder County job data were obtained from Woods & Poole Economics, Inc. (2007). Estimated jobs within the City of Boulder, in both 1990 and 2000, are from the Census Transportation Planning Package. Job projections from the 2008 Community Data Report indicate Boulder’s capture ratio decreases from 39% of countywide jobs in 2006 to 30% by the year 2030.

Figure A8. Job Growth in Boulder

	1990	2000	2006	2008	2013	2030
Boulder County	161,089	239,740	251,526	264,722	297,100	397,456
City of Boulder	73,650	90,255	96,968	97,750	101,905	117,400
Remainder of County	87,439	149,485	154,558	166,972	195,195	280,056
City of Boulder Share	46%	38%	39%	37%	34%	30%

Source: Boulder County from Woods & Poole Economics (2007) based on Bureau of Economic Analysis data. City of Boulder 1990 and 2000 from Census Transportation Planning Package. City of Boulder estimate for 2006. City of Boulder 2008 and 2030 (Area I) from 2008 Community Data Report.



NONRESIDENTIAL DEMAND INDICATORS

In the impact fee study, vehicle trips or employees per demand unit are used to differentiate fees by type of nonresidential development. In Figure A9, gray shading indicates the three nonresidential development prototypes used by TischlerBise to calculate vehicle trips and estimate potential impact fee revenue. The first prototype, for goods-producing jobs, is a warehouse with 784 square feet per employee. The second prototype, for retail and restaurant jobs, is a shopping center with 50,000 square feet of floor area. To more closely match Boulder's actual floor area determined by the County Assessor's parcel database, TischlerBise used Light Industrial as the prototype for Other Services.

Figure A9. Employee and Building Area Ratios

ITE Code	Land Use / Size	Demand Unit	Wkdy Trip Ends Per Dmd Unit*	Wkdy Trip Ends Per Employee*	Emp Per Dmd Unit**	Sq Ft Per Emp
Commercial / Shopping Center						
821	25K gross leasable area	1,000 Sq Ft	110.32	na	3.33	300
820	50K gross leasable area	1,000 Sq Ft	86.56	na	2.86	350
820	100K gross leasable area	1,000 Sq Ft	67.91	na	2.50	400
820	200K gross leasable area	1,000 Sq Ft	53.28	na	2.22	450
820	400K gross leasable area	1,000 Sq Ft	41.80	na	2.00	500
General Office						
710	10K gross floor area	1,000 Sq Ft	22.66	5.06	4.48	223
710	25K gross floor area	1,000 Sq Ft	18.35	4.43	4.14	241
710	50K gross floor area	1,000 Sq Ft	15.65	4.00	3.91	256
710	100K gross floor area	1,000 Sq Ft	13.34	3.61	3.70	271
710	200K gross floor area	1,000 Sq Ft	11.37	3.26	3.49	287
Industrial						
770	Business Park***	1,000 Sq Ft	12.76	4.04	3.16	317
151	Mini-Warehouse	1,000 Sq Ft	2.50	56.28	0.04	22,512
150	Warehousing	1,000 Sq Ft	4.96	3.89	1.28	784
140	Manufacturing	1,000 Sq Ft	3.82	2.13	1.79	558
110	Light Industrial	1,000 Sq Ft	6.97	3.02	2.31	433
Other Nonresidential						
720	Medical-Dental Office	1,000 Sq Ft	36.13	8.91	4.05	247
620	Nursing Home	bed	2.37	6.55	0.36	na
610	Hospital	1,000 Sq Ft	17.57	5.20	3.38	296
565	Day Care	student	4.48	28.13	0.16	na
530	Secondary School	student	1.71	19.74	0.09	na
520	Elementary School	student	1.29	15.71	0.08	na
520	Elementary School	1,000 Sq Ft	14.49	15.71	0.92	1,084
320	Lodging	room	5.63	12.81	0.44	na

* Source: Trip Generation, Institute of Transportation Engineers (2003).

** Employees per demand unit calculated from trip rates, except for Shopping Center data, which are derived from Development Handbook and Dollars and Cents of Shopping Centers, published by the Urban Land Institute.

*** According to ITE, a Business Park is a group of flex-type buildings served by a common roadway system. The tenant space includes a variety of uses with an average mix of 20-30% office/commercial and 70-80% industrial/warehousing.

DEVELOPMENT PROJECTIONS

Key demographic data for the City of Boulder impact fee study are shown in Figure A10. Cumulative data are shown in the top section and annual increases at the bottom of the table. City of Boulder data shown with light green shading are from the 2008 Community Data

Report. Because of the recent downturn in development activity, TischlerBise used an exponential curve formula to derive interim year data between the 2008 and 2030 “end-points.” This method minimizes annual increases in the short run. Job allocation by nonresidential prototype is based on the most recent Labor Shed Area Profile Report from the U.S. Census Bureau’s website called Longitudinal Employer-Household Dynamics.

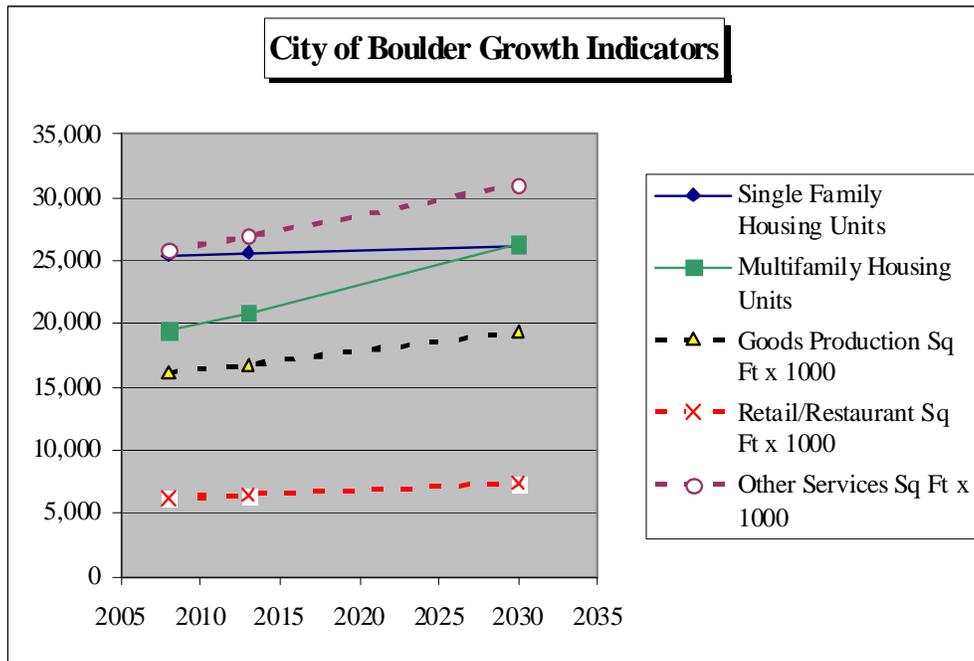
Figure A10. Citywide Demographic Data

<i>Cumulative</i>	<i>Base Year</i>							
	2000	2008	2009	2010	2011	2012	2013	2030
	<i>FY 08-09</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>22</i>	
Year-Round Population	99,093	103,100	103,754	104,413	105,076	105,743	106,414	118,500
Jobs	90,255	97,750	98,567	99,391	100,222	101,060	101,905	117,400
Housing Units	42,740	44,885	45,206	45,529	45,854	46,182	46,512	52,500
Single Family Hsg Units	23,080	25,445	25,477	25,509	25,542	25,575	25,608	26,206
All Other Hsg Units	19,660	19,440	19,729	20,020	20,313	20,608	20,905	26,294
Jobs to Housing Ratio		2.18	2.18	2.18	2.19	2.19	2.19	2.24
Persons per Hsg Unit		2.30	2.30	2.29	2.29	2.29	2.29	2.26
<u>Job Allocation by Type of Development</u>								
Goods Producing Share		21%	21%	21%	21%	21%	21%	21%
Retail/Restaurant Share		18%	18%	18%	18%	18%	18%	18%
Other Services Share		61%	61%	61%	61%	61%	61%	61%
<u>Nonres Sq Ft (x 1,000)</u>								
Goods Producing		16,090	16,230	16,360	16,500	16,640	16,780	19,330
Retail/Restaurant		6,160	6,210	6,260	6,310	6,370	6,420	7,400
Other Services		25,820	26,030	26,250	26,470	26,690	26,920	31,010
Total		48,070	48,470	48,870	49,280	49,700	50,120	57,740
Avg Sq Ft Per Job		492	492	492	492	492	492	492
								<i>2008 to 2030</i>
<u>Annual Increase</u>								<i>Increase</i>
Year-Round Population		654	659	663	667	671	676	15,400
Jobs		817	824	831	838	845	852	19,650
Housing Units		321	323	325	328	330	332	7,615
Goods Producing KSF*		140	130	140	140	140	140	3,240
Retail/Restaurant KSF*		50	50	50	60	50	50	1,240
Other Services KSF*		210	220	220	220	230	220	5,190
* KSF = square feet of floor area in thousands.								Cumulative KSF Increase =>
								Avg Anl KSF Increase =>
								9,670
								440

Key land use assumptions for City of Boulder are summarized in Figure A11. Residential growth rates range from 0.1% annually for Single Family housing to 1.5% per year for Multifamily housing types. Nonresidential growth rates average 0.8% per year. Over the next five years, housing unit construction is projected to average 326 units per year.

Figure A11. Summary of Land Use Assumptions

Boulder, Colorado	2008 FY08-09	2013 FY13-14	2030 FY30-31	2008 to 2013	
				Average Annual	
				Increase	Growth Rate
Single Family Housing Units	25,445	25,608	26,206	33	0.1%
Multifamily Housing Units	19,440	20,905	26,294	293	1.5%
Goods Production Sq Ft x 1000	16,090	16,780	19,330	138	0.9%
Retail/Restaurant Sq Ft x 1000	6,160	6,420	7,400	52	0.8%
Other Services Sq Ft x 1000	25,820	26,920	31,010	220	0.9%



Recently Approved Site Review Projects that have not yet applied for Building Permits

Project	Use	Total Non Residential square feet (sf)/ demand factor	Pre-existing sf/ demand factor	Net New
1725 28 th (Eads / Golden Buff)	Hotels, Office & Retail	270,818 sf hotel / 42,900 office, retail		
1750 14 th (James Travel)	Residential & Office	20,600 sf office		
2655 N. 63 rd (Western Disposal)	Industrial	110,000 sf		
2250 Canyon (Residence Inn)	Hotel	120,000 sf (+/-)		
4700 Pearl (Pearl Pkwy Center)	Office	319,205 sf	0	319,205
5675 Arapahoe (Flatirons Storage)	Public Storage	187,000 sf		
2930 Pearl (Google)	Office	330,000 sf		
2880 Wilderness (Boulder Beer Expansion)	Brewery	16,699 sf	15,022	1,577 sf
1215 Cedar (Washington Village II)	Attached & Detached Dwelling Units with Office	2,650 sf office		
3365 Diagonal (Kum & Go)	Gas Station & Convenience Store	4,992 sf		
2250 Pearl (Pashana Juice Shop)	Restaurant and Residential	1,260 sf for Juice Shop		

EXCISE TAXES

Section 3-8-3, and Section 3-9-2

Development Excise Taxes fund the cost of future capital improvements. The Housing Excise Tax was established to promote the development and provision of housing in the city that is affordable to low-income people.

Development and Housing Excise Taxes are assessed on new residential and nonresidential development and nonresidential additions. Excise taxes are paid prior to final inspection for new construction, or at the time of permit issuance for all other types of construction. The tax rate in effect at the time of application applies.

Tax Name	Nonresidential	Residential	
	<i>Per Square Foot</i>	<i>Per Detached Dwelling Unit</i>	<i>Per Attached Dwelling Unit or Mobile Home</i>
Development Excise Tax			
Park Land	N/A	\$1,144.84	\$795.98
Transportation	\$2.48	\$2,226.93	\$1,650.29
Total	\$2.48	\$3,371.77	\$2,446.27
Housing Excise Tax	\$0.51	\$0.23 per square foot	\$0.23 per square foot

CAPITAL FACILITY IMPACT FEES

Section 4-20-62

Capital facility impact fees will be collected for capital improvements to serve new development. Residential development will be charged impact fees based on unit size. Residential additions will be charged on net additional square footage. Non-residential development will be charged impact fees based on square footage by type of use. Redevelopment will be charged for net new square footage and a change of use. Capital facility impact fees are paid prior to final inspection for new construction, or at the time of permit issuance for all other types of construction. The tax rate in effect at the time of application applies.

Impact Fee Rates for Single Family Residential per Dwelling Unit

Square Feet	Library	Parks & Recreation	Human Services	Municipal Facilities	Police	Fire	TOTAL
900 or less	\$218	\$1,489	\$70	\$133	\$139	\$99	\$2,148
901-1000	\$252	\$1,728	\$80	\$154	\$162	\$115	\$2,491
1001-1100	\$282	\$1,935	\$91	\$172	\$182	\$127	\$2,789
1101-1200	\$310	\$2,126	\$100	\$189	\$199	\$140	\$3,064
1201-1300	\$335	\$2,301	\$109	\$205	\$216	\$154	\$3,320
1301-1400	\$359	\$2,463	\$116	\$219	\$231	\$163	\$3,551
1401-1500	\$382	\$2,616	\$123	\$232	\$244	\$173	\$3,770
1501-1600	\$402	\$2,758	\$130	\$247	\$258	\$183	\$3,978

Impact Fee Rates for Single Family Residential per Dwelling Unit (con't)

Square Feet	Library	Parks & Recreation	Human Services	Municipal Facilities	Police	Fire	TOTAL
1601-1700	\$421	\$2,893	\$136	\$257	\$271	\$191	\$4,169
1701-1800	\$442	\$3,017	\$141	\$268	\$282	\$200	\$4,350
1801-1900	\$458	\$3,135	\$148	\$279	\$294	\$209	\$4,523
1901-2000	\$474	\$3,248	\$154	\$289	\$304	\$216	\$4,685
2001-2100	\$489	\$3,354	\$158	\$298	\$313	\$222	\$4,834
2101-2200	\$505	\$3,457	\$163	\$308	\$325	\$229	\$4,987
2201-2300	\$519	\$3,554	\$167	\$315	\$333	\$235	\$5,123
2301-2400	\$533	\$3,649	\$172	\$326	\$343	\$241	\$5,264
2401-2500	\$545	\$3,738	\$176	\$333	\$350	\$249	\$5,391
2501-2600	\$559	\$3,824	\$181	\$341	\$357	\$254	\$5,516
2601-2700	\$570	\$3,906	\$185	\$348	\$366	\$259	\$5,634
2701-2800	\$582	\$3,986	\$188	\$354	\$374	\$265	\$5,749
2801-2900	\$593	\$4,064	\$191	\$361	\$381	\$270	\$5,860
2901-3000	\$604	\$4,138	\$194	\$368	\$388	\$275	\$5,967
3001-3100	\$614	\$4,208	\$197	\$375	\$394	\$280	\$6,068
3101-3200	\$625	\$4,279	\$201	\$381	\$401	\$285	\$6,172
3201-3300	\$635	\$4,346	\$205	\$388	\$408	\$289	\$6,271
3301-3400	\$645	\$4,413	\$209	\$393	\$414	\$294	\$6,368
3401-3500	\$653	\$4,476	\$212	\$399	\$419	\$297	\$6,456
3501-3600	\$663	\$4,538	\$215	\$405	\$424	\$301	\$6,546
3601-3700	\$673	\$4,598	\$217	\$409	\$429	\$304	\$6,630

Impact Fee Rates for Multifamily Residential per Dwelling Unit

Square Feet	Library	Parks & Recreation	Human Services	Municipal Facilities	Police	Fire	TOTAL
600 or less	\$229	\$1,573	\$73	\$139	\$148	\$171	\$2,333
601-700	\$278	\$1,904	\$90	\$168	\$179	\$207	\$2,826
701-800	\$319	\$2,192	\$103	\$194	\$205	\$238	\$3,251
801-900	\$356	\$2,445	\$116	\$218	\$229	\$267	\$3,631
901-1000	\$390	\$2,671	\$125	\$237	\$251	\$291	\$3,965
1001-1100	\$419	\$2,875	\$136	\$256	\$270	\$313	\$4,269
1101-1200	\$448	\$3,062	\$143	\$273	\$287	\$334	\$4,547
1201-1300	\$473	\$3,234	\$152	\$288	\$302	\$353	\$4,802
1301-1400	\$494	\$3,394	\$160	\$302	\$318	\$370	\$5,038
1401-1500	\$517	\$3,543	\$166	\$314	\$332	\$388	\$5,260
1501-1600	\$537	\$3,680	\$173	\$328	\$345	\$402	\$5,465

Attachment D - City of Boulder Current DET, HET, and Capital Facility Impact Fees
Impact Fee Rates for Nonresidential

		Impact Fee Rates Per Square Foot of Nonresidential Floor Area			
		<i>Municipal Facilities</i>	<i>Police</i>	<i>Fire</i>	<i>TOTAL</i>
<i>Nonresidential Uses</i>	Retail / Restaurant	\$0.14	\$0.50	\$0.40	\$1.04
	Business Park	\$0.17	\$0.11	\$0.10	\$0.38
	Office	\$0.21	\$0.17	\$0.59	\$0.97
	Hospital	\$0.18	\$0.15	\$0.51	\$0.84
	School	\$0.04	\$0.08	\$0.13	\$0.25
	Mini-Warehouse	\$0.00	\$0.02	\$0.00	\$0.02
	Warehousing	\$0.07	\$0.04	\$0.04	\$0.15
	Light Industrial	\$0.12	\$0.06	\$0.08	\$0.26
		Impact Fee Rates for Other Nonresidential Uses Based on Unique Demand Indicators			
		<i>Municipal Facilities</i>	<i>Police</i>	<i>Fire</i>	<i>TOTAL</i>
<i>Other Nonresidential Uses</i>	Nursing Home (per bed)	\$19.80	\$22.00	\$53.89	\$95.69
	Day Care (per student)	\$7.70	\$19.80	\$24.19	\$51.69
	Lodging (per room)	\$24.19	\$52.80	\$67.10	\$144.09

Affordable Housing Linkage Fee (DT-5 nonresidential density bonus only) Nonresidential developments in the DT-5 zoning district that receive a density bonus (additional floor area) are assessed an affordable housing linkage fee of **\$9.53** per square foot for the bonus floor area. This fee is due prior to the issuance of a building permit.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE: Update on P&DS Advisors Group

PRESENTER/S

Jane S. Brautigam, City Manager

Maureen Rait, Executive Director of Public Works

David Driskell, Executive Director of Community Planning and Sustainability

EXECUTIVE SUMMARY

This item is an update on the P&DS Advisors group that staff has convened on a periodic basis since 2006. The P&DS Advisors group consists of Boulder community members interested in city business processes involving land use, engineering and building permit issuance: essentially, how the community's adopted vision for development, as embodied in city codes and regulations, are applied as efficiently and fairly as possible in the review process, for everything from fence and sign permits and residential remodels to larger developments.

The P&DS Advisors Group includes representatives from some of the most frequent customers of the city's [Services Center](#), which is the one-stop, public in-take and information center for the city's development-related functions. This group also includes representatives from neighborhoods and public boards. Since April 5, 2006, City of Boulder staff has held 20 meetings with the P&DS Advisors to discuss ways to improve the city's land use, engineering and building permit-related business processes. These meetings focus on customer service improvements and do not involve the discussion of specific development proposals or serve as a forum for policy deliberation.

BACKGROUND

In the late 1990s, the Departments of Community Planning & Sustainability (CP&S) and Public Works (PW) teamed with Information Technology to acquire land management software. Its implementation required close collaboration and the documentation of existing business processes. That experience highlighted opportunities to improve those processes.

A "service area" known as Planning & Development Services (P&DS) was implemented in 2001 to support all the development-related work functions across the two departments of CP&S and PW. This was done following the establishment of a one-stop-shop on the 3rd floor of the Park Central Building, which integrated multiple "public counters" managed by the two departments that had existed previously in various locations in the downtown campus. Additionally, the P&DS special revenue fund was established as fees are collected for the services that are

provided. The fund financial provides a transparent way of illustrating how those revenues are used to fund services and allows the multi-year aspect of construction to be considered; expenditures related to the services that are provided do not always occur during the same year the revenue is collected.

In 2005 (and again in 2007), the city hired business consultant Ray Wilson to conduct an independent assessment of how primary employers view “doing business in Boulder.” Mr. Wilson conducted interviews and reported his findings to City Council and staff and indicated that the city’s development related processes (land use, engineering and building permit review) were factors that impacted primary employers.

In November 2005, city staff met with the Boulder Economic Council (BEC) to discuss the issues that were identified in that assessment and provide an update on initiatives recently implemented. The BEC appreciated the update and supported the concept of more routine meetings to foster an on-going communication link.

At the time, the city asked who would be interested in attending such meetings and developed a list of group participants based upon a show of hands. The city supplemented the list by adding board members and neighborhood representatives, and contacted those designated to confirm their availability and interest. With regard to the latter, with development at the time focused around the downtown, representatives from the Whittier and Goss Grove neighborhoods were included.

The first meeting of the group was held on April 5, 2006. This initial meeting provided an overview of the Planning and Public Works departments and highlighted the service area and fund known as “Planning & Development Services.” The meeting also provided information updates on current initiatives; permit activity as well as a venue to provide feedback for business process improvements.

There have been a total of 20 meetings of this group.

ANALYSIS

The P&DS Advisor meetings focus on information updates and ways to improve the city's land use, engineering and building permit- related processes. These meetings do not involve discussion of specific development proposals or serve as a forum for policy deliberation. For example, discussion topics have included the hours of operations for the public counter, process coordination between engineering review (also known as technical document review) and building permit review, and opportunities to enhance the city’s website and development tracking software to improve public access to information involving the status of projects.

Basic city operations and services constitute a significant portion of resource allocation citywide. It is the organization’s work ethic that there is always room to improve service delivery. City staff has found it beneficial to actively engage customers in order to share information about what is being done to improve services and better understand what customers think about proposed changes.

In general, past meeting agendas have covered topics related to:

- Summaries of city revenues and expenditures;
- Summaries of city permit activity levels;
- Updates on recent city initiatives and work programs;
- City staffing updates; and
- Customer feedback about opportunities for improvements to city business processes, including opportunities to incorporate customer service enhancements as part of the city's major investment in replacing its land management software, LandLink.

The most recent P&DS Advisors meeting was held on Oct. 22, 2014 and included updates on the 2015 Budget process and the Oct. 14, 2014 joint study session between the City Council and the Planning Board (regarding planning issues and the Boulder Valley Comprehensive Plan).

[See a summary of the P&DS Advisor Group meetings from 2006 through 2014.](#)

Although no one has been turned away from past meetings, they have not been publicly noticed on the city calendar.

NEXT STEPS

Future actions related to the P&DS Advisor Group will be determined based upon City Council feedback and discussion on February 3.

For more information on the P&DS Advisor Group, visit <https://bouldercolorado.gov/plan-develop/pds-advisors>. This site includes examples of when Council has been informed of this group and the input it provided on particular topics.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 3, 2015

AGENDA TITLE Consideration of a motion to approve the process for performance evaluations and salary adjustments for the City Manager, City Attorney, and Municipal Judge.

PRESENTER/S

Lisa Morzel and Tim Plass, City Council Employee Evaluation Committee

EXECUTIVE SUMMARY

The Boulder City Council provides timely and meaningful feedback to its employees on an annual basis. Performance evaluations, along with relevant market data, serve as the basis for evaluating the employee and justification for possible pay increases awarded to City Council employees who include the city manager, the city attorney and the municipal judge. Each performance year is calculated from June to June with the evaluation process taking place from April through August. City Council appoints an Evaluation Committee that oversees the annual evaluation process as well as conducts a mid-year check-in with council employees in December and the final year review in June.

The performance evaluation process is comprised of several components:

- **Self Evaluations:** The three Council employees provide a self evaluation for their performance over the previous year.
- **Multi-rater Feedback:** Each employee selects a number of co-workers, direct reports and outside contacts that provide feedback on the employee's performance. The Evaluation Committee reviews the selections and modifies as necessary.
- **Market Survey:** The Human Resources Department collects and provides council with comparable salary and market data from other organizations.
- **City Council Evaluation:** City Council members review the self evaluations and multi-rater feedback and then complete the evaluation rating form for each employee.

- **Pay Recommendations:** After reviewing all feedback the Evaluation Committee provides the full council with a salary increase recommendation for each employee. Any increase in salary requires approval by the City Council.
- **Annual and mid-year Performance Review Meetings:** The Evaluation Committee meets at least two times per year with each employee to share multi-rater and Council evaluation feedback.
- **Wrap-up/debrief:** After completion of the evaluations the Evaluation Committee, the Consultant and the Human Resources Department representative meet to debrief the process and make suggestions for improvements.

COUNCIL COMMITTEE RECOMMENDATION

The Council Employee Evaluation Committee recommends a motion to approve the process for performance evaluations and salary adjustments for the City Manager, City Attorney, and Municipal Judge.

IMPACTS

- **Fiscal** – The adoption of this process allows for the hiring of a consultant to assist with the overall coordination of the evaluation process, subject to the approval of the Evaluation Committee, to include, but not be limited to:
 - Receiving the self evaluations from employees
 - Distributing, collecting and tabulating the multi-rater feedback instruments
 - Collecting the survey data from the Court Administrator
 - Compiling all results for City Council
 - Preparing documents and communications
 - Ensuring the timeliness and accuracy of all data and steps in the process in accordance with the approved time-line
 - Assisting Evaluation Committee with any pay increase recommendations
- The historical cost of this consultant has been less than or around \$5,000.
- **Staff Time** – Staff support for the process requires roughly 40 hours of staff time.

ANALYSIS

Each year the City Council considers granting a performance pay increase to its Council employees based upon an evaluation procedure the city council adopted in 1998. Since then, the process has been overseen by several different Council Evaluation Committees and enhancements and changes were made to that process. The current committee slightly modified and refined the process over the past two years and documented the steps and roles and responsibilities as outlined in Attachment A. Approval of this process would create a reference for council members, council employees, as well as staff, and would provide improved consistency.

ATTACHMENT A - 2015 January 20 – Council Employee Evaluation Process

City of Boulder
City Council Employee Evaluation Process

I. **Overview:**

The Boulder City Council seeks to provide timely and meaningful feedback to its employees. One mechanism to accomplish this is to conduct annual performance evaluations. These performance evaluations, along with relevant market data, also serve as the basis and justification for any pay increases that are awarded to City Council employees. The Council employees are the City Manager, the City Attorney and the Municipal Judge.

II. **Process Components:**

- **Self Evaluations:** The three Council employees provide feedback on their own performance over the year.

- **Multi-rater Feedback:** Each employee selects a number of co-workers, direct reports and outside contacts that provide feedback on the employee's performance. The committee reviews the selections and modifies as necessary.

- **City Council Evaluation:** City Council members review the self evaluations and multi-rater feedback. Each member completes their written evaluation of the employee's performance and returns their comments to the Council Employee Evaluation Committee.

- **Market Survey:** The Human Resources Department collects comparable salary and other market data from other organizations for the three positions.

- **Pay Recommendations:** The Evaluation Committee presents salary increase recommendations to the full Council. Council approves pay changes with their effective date.

- **Annual and mid-year Performance Review Meetings:** The Evaluation Committee meets at least two times per year with each employee for the annual review and to share Council and employee feedback for the mid-year check in.

- **Wrap-up/debrief:** The Evaluation Committee, Consultant and HR meet to evaluate process and make suggestions for improvements for next year's reviews.

III. **Roles and Responsibilities:**

City Council is responsible for:

- Appointing an Evaluation Committee of two members
- Completing the evaluation instrument in a timely manner within the annual review cycle, including reviewing and processing all information provided
- Providing individual feedback to employees as needed
- Determining and approving any pay changes for employees

The Evaluation Committee is responsible for:

- Working with the consultant to ensure a timely and accurate process is accomplished to include, approving time frames, documents, etc.
- Communicating with City Council
- Scheduling items with City Clerk, City Council and the consultant as needed
- Communicating the results of the evaluations with each employee and serving as a conduit for communications between the employees and City Council
- Providing salary change recommendations to City Council
- Debriefing the annual process with the Consultant and staff

The Human Resources Department is responsible for:

- Serving as project manager for the process, establishing Committee meetings and process calendar for the year
- Obtaining comparable market data from other organizations and providing that to the consultant as needed
- Maintaining the official personnel records for the employees
- Providing additional information to the Evaluation Committee and the consultant as needed
- Specific to the Human Resources Director - serving as the Custodian of the Executive Personnel files for Council employees

The City Council Employees are responsible for:

- Being active participants in their evaluation by completing a self-evaluation and submitting that to the consultant as requested by the Evaluation Committee
- Providing the consultant with the names and contact information of co-workers, direct reports and outside contacts that are to be part of the multi-rater feedback process

- Receiving from and providing feedback to the Evaluation Committee and City Council members
- Responding to City Council requests for information, goals and any performance plans as requested.

The Court Administrator and Court Staff are responsible for:

- Coordinating the customer survey process, tabulating the results and providing that information to the consultant as requested
- Completing feedback instruments as requested

The Consultant is responsible for:

- The overall coordination of the evaluation process, subject to the approval of the Evaluation Committee, to include, but not be limited to:
 - Receiving the self evaluations from employees
 - Distributing, collecting and tabulating the multi-rater feedback instruments
 - Collecting the survey data from the Court Administrator
 - Compiling all results for City Council
 - Preparing documents and communications
 - Ensuring the timeliness, accuracy and confidentiality of all data and steps in the process in accordance with the approved time-line
- Assisting Evaluation Committee with any pay increase recommendations

The Participants in the multi-rater feedback process are responsible for:

- Completing and submitting the instrument in a timely manner
- Maintaining confidentiality of their responses

IV. Timeline for the Process:

April

- Self Evaluation forms (Attachment A) sent to employees by Consultant. Four (4) weeks are allowed for the employees to complete the self evaluations and return to the Consultant.
- Consultant requests multi-rater names and phone numbers from employees

May

- Consultant distributes feedback surveys(Attachment B) to multi-raters. Two (2) weeks are allowed for multi-raters to complete the survey.

June

- Consultant distributes summarized multi-rater feedback and self evaluation information to Evaluation Committee and Council along with Council Evaluation Forms (Attachment C). Council is given two weeks to review the feedback and prepare their Evaluation of each employee.

July

- HR completes Market Salary Survey (Attachment D)
- Consultant reviews Council Evaluations with Evaluation Committee
- Consultant sends summarized Council feedback and Market Survey to Council members and requests pay increase recommendations (Attachment E). The pay recommendations are due back to the Consultant within a week.
- Annual Performance Evaluation Discussions are scheduled with the Committee and Council employees

August

- Evaluation Committee presents pay increase recommendations to Council
- Council approves or denies pay recommendations
- The Evaluation Committee, Consultant and HR meet to evaluate process and make suggestions for improvements for next year's reviews.

December

- The Council Evaluation Committee meets for mid-year review with executive employees. The Committee requests any Council feedback for employees.

City of Boulder
2013-2014 Performance Evaluation
Self-Evaluation Report - CITY ATTORNEY

Note: Please respond in the gray area. The space will expand as you type.

1. Please describe your performance/accomplishments in the following areas since July 1, 2013
Be specific in terms of actions taken and results achieved.

a. Staff Development and Organizational Teamwork

b. Fiscal/Budgetary Responsibility

c. Departmental Quality Improvements

d. Other Noteworthy Areas

2. In addition to the explicit goals and objectives of the City Council, what goals have you set for yourself and detail progress in accomplishing these goals?

3. Provide a few specific examples of how you demonstrated the City's organizational values. What areas do you consider to be strengths?

a. Customer Service

b. Respect

c. Integrity

d. Collaboration

e. Innovation

4. Over the past twelve months:

a. In what area(s) have you excelled?

b. In what area(s) do you wish you would have performed differently?

5. What (if any) unplanned projects or activities took significant time and focus? How did these contribute to team, department or city goals?

6. Describe professional development activities you completed in the past 12 months.

[Redacted]

7. What else should City Council take into account as we evaluate your performance over the past 12 months?

[Redacted]

8. Please describe the steps you have taken and the progress you have made in addressing the areas identified as needing improvement in last year's evaluation.

[Redacted]

Performance Planning 2014 - 2015:

1. What do you see as your major goals for the next evaluation period, and how can the City Council help you accomplish these goals?

[Redacted]

2. How could City Council help you do your job more effectively and efficiently in the next 12 months?

[Redacted]

3. Are there any trends or issues City Council should be aware of?

[Redacted]

4. Describe professional development activities you would like to pursue in the next year.

[Redacted]

City of Boulder
2013-2014 Performance Evaluation
Self-Evaluation Report - CITY MANAGER

Note: Please respond in the gray area. The space will expand as you type.

1. Please describe your performance/accomplishments in the following areas since July 1, 2013.
Be specific in terms of actions taken and results achieved.
 - a. Staff Development and Organizational Teamwork
[Redacted]
 - b. Fiscal/Budgetary Responsibility
[Redacted]
 - c. Departmental Quality Improvements
[Redacted]
 - d. Other Noteworthy Areas
[Redacted]

2. In addition to the explicit goals and objectives of the City Council, what goals have you set for yourself and detail progress in accomplishing these goals?
[Redacted]

3. Provide a few specific examples of how you demonstrated the City's organizational values. What areas do you consider to be strengths?
 - a. Customer Service
[Redacted]
 - b. Respect
[Redacted]
 - c. Integrity
[Redacted]
 - d. Collaboration
[Redacted]
 - e. Innovation
[Redacted]

4. Over the past twelve months:
 - a. In what area(s) have you excelled?
[Redacted]
 - b. In what area(s) do you wish you would have performed differently?
[Redacted]

5. What (if any) unplanned projects or activities took significant time and focus? How did these contribute to team, department or city goals?
[Redacted]

6. Describe professional development activities you completed in the past 12 months.

[Redacted]

7. What else should City Council take into account as we evaluate your performance over the past 12 months?

[Redacted]

8. Please describe the steps you have taken and the progress you have made in addressing the areas identified as needing improvement in last year's evaluation.

[Redacted]

Performance Planning 2014 - 2015:

1. What do you see as your major goals for the next evaluation period, and how can the City Council help you accomplish these goals?

[Redacted]

2. How could City Council help you do your job more effectively and efficiently in the next 12 months?

[Redacted]

3. Are there any trends or issues City Council should be aware of?

[Redacted]

4. Describe professional development activities you would like to pursue in the next year.

[Redacted]

City of Boulder
2013-2014 Performance Evaluation
Self-Evaluation Report – MUNICIPAL JUDGE

Note: Please respond in the gray area. The space will expand as you type.

1. Please describe your performance/accomplishments in the following areas since July 1, 2013.
Be specific in terms of actions taken and results achieved.

a. Staff Development and Organizational Teamwork

b. Fiscal/Budgetary Responsibility

c. Departmental Quality Improvements

d. Other Noteworthy Areas

2. In terms of goals:

a. Please describe your performance/accomplishments in regard to City Council goals during the past year. *Be specific in terms of actions taken and results achieved.*

b. Please discuss your progress on the goals that you listed in last year’s self-evaluation that were discussed and reviewed with you.

3. Provide a few specific examples of how you demonstrated the City’s organizational values. What areas do you consider to be strengths?

a. Customer Service

b. Respect

c. Integrity

d. Collaboration

e. Innovation

4. Over the past twelve months:
 - a. In what area(s) have you excelled?
[Redacted]
 - b. In what area(s) do you wish you would have performed differently?
[Redacted]

5. What (if any) unplanned projects or activities took significant time and focus? How did these contribute to team, department or city goals?
[Redacted]

6. Describe professional development activities you completed in the past 12 months.
[Redacted]

7. What else should City Council take into account as we evaluate your performance over the past 12 months?
[Redacted]

8. Please describe the steps you have taken and the progress you have made in addressing the areas identified as needing improvement in last year's evaluation.
[Redacted]

Performance Planning 2014-2015:

1. What goals would you like to establish for the upcoming year?
[Redacted]

2. How could City Council help you do your job more effectively and efficiently in the next 12 months?
[Redacted]

3. Are there any trends or issues City Council should be aware of?
[Redacted]

4. Describe professional development activities you would like to pursue in the next year.
[Redacted]

Multi-Rater Feedback - City Attorney 2013 - 2014

Feedback for: City Attorney - Tom Carr

Using a scale where 1 = poor and 10 = excellent, please rate the City Attorney in the following areas. Click the radio button that best describes the skill level. Please mark the "Unable to Rate" column if you feel unable to judge the skill listed.

1. Professional Competence

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Possesses relevant professional knowledge and skills of Public Administration	<input type="radio"/>										
b. Competently performs routine and new tasks	<input type="radio"/>										
c. Continues to develop professional proficiencies	<input type="radio"/>										
d. Maintains good working relationships with Council, staff and citizens	<input type="radio"/>										
e. Builds departmental and cross-departmental relationships	<input type="radio"/>										
f. Demonstrates varied facilitation, negotiation and conflict resolution skills	<input type="radio"/>										
g. Effectively uses technology within the organization	<input type="radio"/>										
h. Possesses and applies strong financial management and budgetary skills	<input type="radio"/>										

Professional Competence - Comments:

Multi-Rater Feedback - City Attorney 2013 - 2014

2. Respect for Diversity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Consistently treats others with courtesy, dignity and respect	<input type="radio"/>										
b. Acknowledges and respects human differences	<input type="radio"/>										
c. Values diverse points of view	<input type="radio"/>										
d. Encourages full participation	<input type="radio"/>										
e. Contributes to staff cohesiveness and morale	<input type="radio"/>										

Respect for Diversity - Comments:

Multi-Rater Feedback - City Attorney 2013 - 2014

3. Teamwork

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Fosters good teamwork	<input type="radio"/>										
b. Accepts and offers team direction	<input type="radio"/>										
c. Meets personal commitments to team	<input type="radio"/>										
d. Encourages communication, collaboration and cooperation	<input type="radio"/>										
e. Celebrates successes	<input type="radio"/>										
f. Learns from mistakes	<input type="radio"/>										
g. Encourages and reinforces individual efforts	<input type="radio"/>										

Teamwork - Comments:

Multi-Rater Feedback - City Attorney 2013 - 2014

4. Task Accomplishment

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Plans/prioritizes effectively	<input type="radio"/>										
b. Completes tasks and achieves goals	<input type="radio"/>										
c. Demonstrates initiative and innovation	<input type="radio"/>										
d. Provides high quality internal service	<input type="radio"/>										
e. Provides high quality external service	<input type="radio"/>										

Task Accomplishment - Comments:

Multi-Rater Feedback - City Attorney 2013 - 2014

5. Leadership

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Motivates, trains and develops team members	<input type="radio"/>										
b. Performs well in stressful or challenging situations	<input type="radio"/>										
c. Works to improve processes and increase department efficiency	<input type="radio"/>										
d. Participates in City-wide initiatives as appropriate	<input type="radio"/>										
e. Seeks out feedback and accepts in a positive manner	<input type="radio"/>										
f. Takes specific initiative to achieve and maintain positive climate in department	<input type="radio"/>										
g. Is trusted by all levels of staff	<input type="radio"/>										
h. Is organized	<input type="radio"/>										
i. Resolves problems with long term benefits in mind	<input type="radio"/>										
j. Has effective oral communication skills	<input type="radio"/>										
k. Is a good, active listener	<input type="radio"/>										
l. Is open to new and innovative approaches	<input type="radio"/>										
m. Sensitive to demeanor and non-verbal communication	<input type="radio"/>										

Leadership - Comments:

Multi-Rater Feedback - City Attorney 2013 - 2014



Multi-Rater Feedback - City Attorney 2013 - 2014

6. Integrity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Behavior conforms to standards of ethics	<input type="radio"/>										
b. Does what is right regardless of personal consequences	<input type="radio"/>										
c. Exhibits trustworthiness and honesty	<input type="radio"/>										
d. Treats people fairly	<input type="radio"/>										
e. Maintains confidentiality	<input type="radio"/>										

Integrity - Comments:

Multi-Rater Feedback - City Manager 2013 - 2014

Feedback for: City Manager, Jane Brautigam

Using a scale where 1 = poor and 10 = excellent, please rate the City Manager in the following areas. Click the radio button that best describes the skill level. Please mark the "Unable to Rate" column if you feel unable to judge the skill listed.

1. Professional Competence

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Possesses relevant professional knowledge and skills of Public Administration	<input type="radio"/>										
b. Competently performs routine and new tasks	<input type="radio"/>										
c. Continues to develop professional proficiencies	<input type="radio"/>										
d. Maintains good working relationships with Council, staff and citizens	<input type="radio"/>										
e. Builds departmental and cross-departmental relationships	<input type="radio"/>										
f. Demonstrates varied facilitation, negotiation and conflict resolution skills	<input type="radio"/>										
g. Effectively uses technology within the organization	<input type="radio"/>										
h. Possesses and applies strong financial management and budgetary skills	<input type="radio"/>										

Professional Competence - Comments:

Multi-Rater Feedback - City Manager 2013 - 2014

2. Respect for Diversity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Consistently treats others with courtesy, dignity and respect	<input type="radio"/>										
b. Acknowledges and respects human differences	<input type="radio"/>										
c. Values diverse points of view	<input type="radio"/>										
d. Encourages full participation	<input type="radio"/>										
e. Contributes to staff cohesiveness and morale	<input type="radio"/>										

Respect for Diversity - Comments:

Multi-Rater Feedback - City Manager 2013 - 2014

3. Teamwork

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Fosters good teamwork	<input type="radio"/>										
b. Accepts and offers team direction	<input type="radio"/>										
c. Meets personal commitments to team	<input type="radio"/>										
d. Encourages communication, collaboration and cooperation	<input type="radio"/>										
e. Celebrates successes	<input type="radio"/>										
f. Learns from mistakes	<input type="radio"/>										
g. Encourages and reinforces individual efforts	<input type="radio"/>										

Teamwork - Comments:

Multi-Rater Feedback - City Manager 2013 - 2014

4. Task Accomplishment

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Plans/prioritizes effectively	<input type="radio"/>										
b. Completes tasks and achieves goals	<input type="radio"/>										
c. Demonstrates initiative and innovation	<input type="radio"/>										
d. Provides high quality internal service	<input type="radio"/>										
e. Provides high quality external service	<input type="radio"/>										

Task Accomplishment - Comments:

Multi-Rater Feedback - City Manager 2013 - 2014

5. Leadership

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Motivates, trains and develops team members	<input type="radio"/>										
b. Performs well in stressful or challenging situations	<input type="radio"/>										
c. Works to improve processes and increase department efficiency	<input type="radio"/>										
d. Participates in City-wide initiatives as appropriate	<input type="radio"/>										
e. Seeks out feedback and accepts in a positive manner	<input type="radio"/>										
f. Takes specific initiative to achieve and maintain positive climate in department	<input type="radio"/>										
g. Is trusted by all levels of staff	<input type="radio"/>										
h. Is organized	<input type="radio"/>										
i. Resolves problems with long term benefits in mind	<input type="radio"/>										
j. Has effective oral communication skills	<input type="radio"/>										
k. Is a good, active listener	<input type="radio"/>										
l. Is open to new and innovative approaches	<input type="radio"/>										
m. Sensitive to demeanor and non-verbal communication	<input type="radio"/>										

Leadership - Comments:

Multi-Rater Feedback - City Manager 2013 - 2014



Multi-Rater Feedback - City Manager 2013 - 2014

6. Integrity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Behavior conforms to standards of ethics	<input type="radio"/>										
b. Does what is right regardless of personal consequences	<input type="radio"/>										
c. Exhibits trustworthiness and honesty	<input type="radio"/>										
d. Treats people fairly	<input type="radio"/>										
e. Maintains confidentiality	<input type="radio"/>										

Integrity - Comments:

Multi-Rater Feedback - Municipal Judge 2013-2014

Feedback for: Municipal Judge - Linda Cooke

Using a scale where 1 = poor and 10 = excellent, please rate the Municipal Judge in the following areas. Click the radio button that best describes the skill level. Please mark the "Unable to Rate" column if you feel unable to judge the skill listed.

1. Professional Competence

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Possesses relevant professional knowledge and skills of Public Administration	<input type="radio"/>										
b. Competently performs routine and new tasks	<input type="radio"/>										
c. Continues to develop professional proficiencies	<input type="radio"/>										
d. Maintains good working relationships with Council, staff and citizens	<input type="radio"/>										
e. Builds departmental and cross-departmental relationships	<input type="radio"/>										
f. Demonstrates varied facilitation, negotiation and conflict resolution skills	<input type="radio"/>										
g. Effectively uses technology within the organization	<input type="radio"/>										

Professional Competence - Comments:

Multi-Rater Feedback - Municipal Judge 2013-2014

2. Respect for Diversity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Consistently treats others with courtesy, dignity and respect	<input type="radio"/>										
b. Acknowledges and respects human differences	<input type="radio"/>										
c. Values diverse points of view	<input type="radio"/>										
d. Encourages full participation	<input type="radio"/>										

Respect for Diversity - Comments:

Multi-Rater Feedback - Municipal Judge 2013-2014

3. Teamwork

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Accepts and offers team direction when appropriate	<input type="radio"/>										
b. Encourages communication, collaboration and cooperation	<input type="radio"/>										
c. Celebrates successes	<input type="radio"/>										
d. Learns from mistakes	<input type="radio"/>										
e. Encourages and reinforces individual efforts	<input type="radio"/>										

Teamwork - Comments:

Multi-Rater Feedback - Municipal Judge 2013-2014

4. Task Accomplishment

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Plans/prioritizes effectively	<input type="radio"/>										
b. Completes tasks and achieves goals	<input type="radio"/>										
c. Demonstrates initiative and innovation	<input type="radio"/>										
d. Provides high quality internal service	<input type="radio"/>										
e. Provides high quality external service	<input type="radio"/>										

Task Accomplishment - Comments:

Multi-Rater Feedback - Municipal Judge 2013-2014

5. Leadership

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Performs well in stressful or challenging situations	<input type="radio"/>										
b. Participates in City-wide initiatives as appropriate	<input type="radio"/>										
c. Seeks out feedback and accepts in a positive manner	<input type="radio"/>										
d. Is organized	<input type="radio"/>										
e. Resolves problems with long term benefits in mind	<input type="radio"/>										
f. Has effective oral communication skills	<input type="radio"/>										
g. Is a good, active listener	<input type="radio"/>										
h. Is open to new and innovative approaches	<input type="radio"/>										
i. Sensitive to demeanor and non-verbal communication	<input type="radio"/>										

Leadership - Comments:

Multi-Rater Feedback - Municipal Judge 2013-2014

6. Integrity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Behavior conforms to standards of ethics	<input type="radio"/>										
b. Does what is right regardless of personal consequences	<input type="radio"/>										
c. Exhibits trustworthiness and honesty	<input type="radio"/>										
d. Treats people fairly	<input type="radio"/>										
e. Maintains confidentiality	<input type="radio"/>										

Integrity - Comments:

Court Staff Evaluation of Municipal Judge - Boulder 2013 -

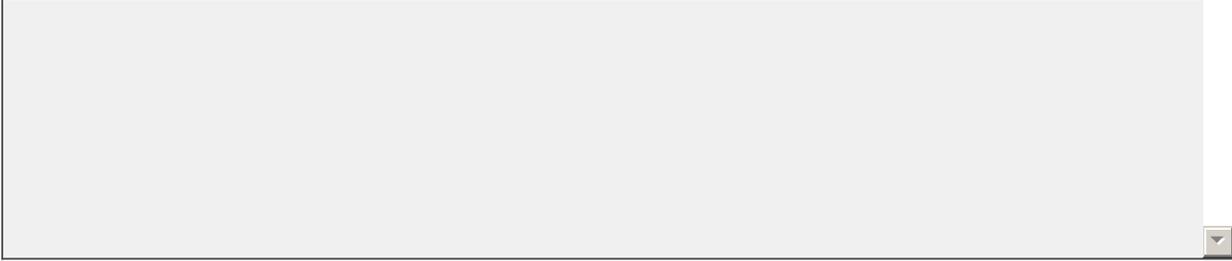
Please rate the judge's performance based on your personal experience. Using a scale where 1 = poor and 10 = excellent, please rate the Municipal Judge in the following areas. Click the radio button that best describes the skill level. Please mark the "Unable to Rate" column if you feel unable to judge the skill listed.

* 1. Integrity and Impartiality

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Avoids impropriety and the appearance of impropriety.	<input type="radio"/>										
b. Treats court personnel with dignity and respect.	<input type="radio"/>										
c. Treats litigants with dignity and respect.	<input type="radio"/>										
d. Treats attorneys with dignity and respect.	<input type="radio"/>										
e. Willingness to make difficult or unpopular decisions.	<input type="radio"/>										
f. Acts fairly by giving people individual consideration.	<input type="radio"/>										
g. Considers both sides of an argument before rendering a decision.	<input type="radio"/>										
h. Bases decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="radio"/>										
i. Keeps an open mind and considers all relevant issues in making decisions.	<input type="radio"/>										
j. Acts without favor or disfavor toward anyone, including but not limited to favor or disfavor based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.	<input type="radio"/>										

If you answered 1,2,3, 4 or 5, please fill in the box below with why you believe the Judge acts with favor or disfavor to anyone based upon personal characteristics such as those listed above, Please list the characteristic(s) giving rise to your belief.

Court Staff Evaluation of Municipal Judge - Boulder 2013 -



Court Staff Evaluation of Municipal Judge - Boulder 2013 -

*2. Communication

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Uses clear and logical oral communication in court.	<input type="radio"/>										
b. Uses plain English and understandable language when speaking to prospective or seated jurors, litigants, and witnesses.	<input type="radio"/>										

Communication - comments

Court Staff Evaluation of Municipal Judge - Boulder 2013 -

*3. Professionalism and Temperament

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Acts in a dignified manner.	<input type="radio"/>										
b. Treats people with courtesy.	<input type="radio"/>										
c. Acts with patience and self control.	<input type="radio"/>										
d. Works with pro se litigants and litigation fairly and effectively.	<input type="radio"/>										
e. Promotes public understanding of and confidence in the courts.	<input type="radio"/>										

Professionalism and Temperament - Comment

Court Staff Evaluation of Municipal Judge - Boulder 2013 -

*4. Administrative Capacity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Is punctual and prepared for court.	<input type="radio"/>										
b. Maintains control over the courtroom, including courtroom personnel.	<input type="radio"/>										
c. Appropriately enforces court rules, orders, and deadlines.	<input type="radio"/>										
d. Makes decisions and rulings in a prompt, timely manner.	<input type="radio"/>										
e. Manages the court's docket efficiently.	<input type="radio"/>										
f. Fosters a productive work environment with other judges and court staff.	<input type="radio"/>										
g. Acts to ensure that disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="radio"/>										

Administrative Capacity - Comments:

Court Staff Evaluation of Municipal Judge - Boulder 2013 -

5. Do you have additional comments, clarifications, or details related to either the items raised in this questionnaire or the judge's performance on the bench that you would like to provide? If so, please comment in the space below.

Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

Feedback for: Municipal Judge - Linda Cooke

Please rate the judge's performance based on your personal experience. Using a scale where 1 = poor and 10 = excellent, please rate the Municipal Judge in the following areas. Click the radio button that best describes the skill level. Please mark the "Unable to Rate" column if you feel unable to judge the skill listed.

* 1. Legal Ability

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Legal reasoning ability.	<input type="radio"/>										
b. Knowledge of substantive law.	<input type="radio"/>										
c. Knowledge of rules of procedure and evidence.	<input type="radio"/>										
d. Keeps current on developments in substantive law and rules of procedure and evidence.	<input type="radio"/>										
e. Properly applies judicial precedents, statutes and other appropriate legal authorities.	<input type="radio"/>										

Legal Ability - Comments:

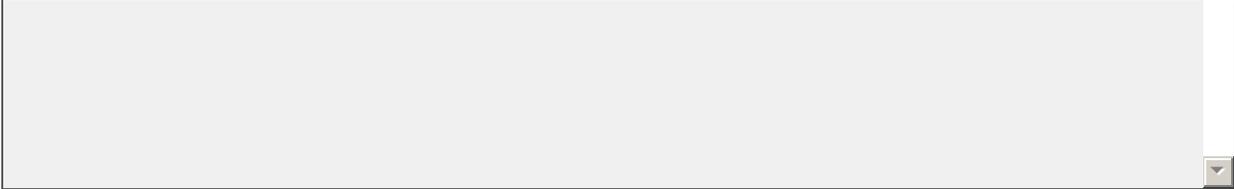
Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

*2. Integrity and Impartiality

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Avoids impropriety and the appearance of impropriety.	<input type="radio"/>										
b. Treats all people with dignity and respect.	<input type="radio"/>										
c. Willingness to make difficult or unpopular decisions.	<input type="radio"/>										
d. Acts fairly by giving people individual consideration.	<input type="radio"/>										
e. Considers both sides of an argument before rendering a decision.	<input type="radio"/>										
f. Presents a neutral presence on the bench.	<input type="radio"/>										
g. Refrains from inappropriate ex parte communication.	<input type="radio"/>										
h. Bases decisions on the law and facts without regard to the identity of the parties or counsel.	<input type="radio"/>										
i. Keeps an open mind and considering all relevant issues in making decisions.	<input type="radio"/>										
j. Acts without favor or disfavor toward anyone, including but not limited to favor or disfavor based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.	<input type="radio"/>										

If you answered 1,2,3, 4 or 5, please fill in the box below with why you believe the Judge acts with favor or disfavor to anyone based upon personal characteristics such as those listed above, Please list the characteristic(s) giving rise to your belief.

Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -



Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

*3. Communication

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Uses clear and logical oral communication while in court.	<input type="radio"/>										
b. Uses plain English and understandable language when speaking to prospective or seated jurors, litigants, and witnesses.	<input type="radio"/>										
c. Prepares clear and logical written decisions and orders.	<input type="radio"/>										

Communication - comments

Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

*4. Professionalism and Temperament

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Acts in a dignified manner.	<input type="radio"/>										
b. Treats people with courtesy, including attorneys, court staff, defendants and others.	<input type="radio"/>										
c. Is attentive to proceedings.	<input type="radio"/>										
d. Acts with patience and self control, demonstrates appropriate demeanor.	<input type="radio"/>										
e. When working with pro se litigants and litigation does so fairly and effectively.	<input type="radio"/>										
f. Has appropriate levels of empathy with the parties involved in proceeding.	<input type="radio"/>										
g. Promotes public understanding of and confidence in the courts.	<input type="radio"/>										

Professionalism and Temperament - Comment

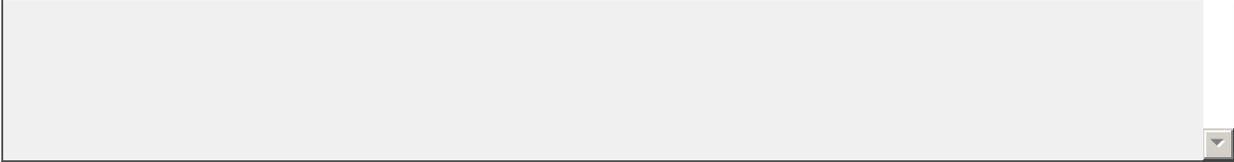
Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

*5. Administrative Capacity

	Unable to rate	1 = poor	2	3	4	5	6	7	8	9	10=excellent
a. Is punctual for court.	<input type="radio"/>										
b. Is prepared for court.	<input type="radio"/>										
c. Maintains control over the courtroom.	<input type="radio"/>										
d. Appropriately enforces court rules, orders, and deadlines.	<input type="radio"/>										
e. Makes decisions and rulings in a prompt, timely manner.	<input type="radio"/>										
f. Manages the court's docket efficiently.	<input type="radio"/>										
g. Uses settlement conferences and alternative dispute resolution mechanisms as appropriate.	<input type="radio"/>										
h. Demonstrates appropriate innovation in the use of technology to improve the administration of justice.	<input type="radio"/>										
i. Fosters a productive work environment with other judges and court staff.	<input type="radio"/>										
j. Acts to ensure that disabilities and linguistic and cultural differences do not limit access to the justice system.	<input type="radio"/>										
k. Effectively manages cases.	<input type="radio"/>										
l. Offers to help fellow judges where appropriate; shares burden of court workload.	<input type="radio"/>										

Administrative Capacity - Comments:

Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -



Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

6. How long have you been a practicing attorney?

- Less than 1 year
- 1-2 years
- 3-5 years
- 6-10 years
- 11-20 years
- More than 20 years

7. Which of the following areas of law best describe your practice (select up to 2 items)?

- Civil Tort - Defense
- Civil Tort - Plaintiff
- Criminal - Prosecution
- Commercial & General Civil
- Juvenile Offender or Dependency
- Domestic Relations/Family Law
- Estate/Probate
- Government Practice

Other (please specify)

8. Which of the following best describes your work setting?

- Prosecuting Attorney's Office
- Attorney General's Office
- Public Defender/Department of Assigned Counsel
- Legal Aid
- In House Corporate Counsel
- Private Practice

Other (please specify)

Trial Attorney Evaluation of Municipal Judge - Boulder 2013 -

9. How many attorneys are employed by your firm?

- Sole Practitioner
- 2-5 Attorneys
- 6-10 Attorneys
- 11-20 Attorneys
- Greater than 20 Attorneys

10. How many times have you appeared in Judge Cooke's court over the past year?

- Never
- Once
- 2-3 times
- 4-10 times
- More than 10 times

11. Please provide any additional comments, clarifications, or details related to either the items raised in this questionnaire or the judge's performance on the bench in the space below.

2014 Council Employee Performance Evaluation

Evaluation Period: July 1, 2013– June 30, 2014

City Attorney

Part I Core Performance Factors

Name of Evaluator:

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
<p>PROFESSIONAL COMPETENCE: Possesses and applies professional skills and knowledge; continues to develop proficiency; cultivates necessary relationships within and outside the City organization.</p>	0	<ul style="list-style-type: none"> – Lacks professional knowledge to perform effectively. – Cannot apply basic skills. – Fails to develop professionally. – Flawed relationships with Council, Boards and Commissions, staff; grudging in responses to citizens. 	3 4	<ul style="list-style-type: none"> – Has thorough professional knowledge; keeps up with changes in the field, including mandatory continuing education. – Competently performs both routine and new tasks. – Steadily improves skills. – Maintains good working relationships with Council, Boards and Commissions, staff and citizens. 	7 8	<ul style="list-style-type: none"> – Extensive knowledge in field, recognized leader in field, sought after to solve difficult problems or to speak in field. – Exceptionally skilled, develops and executes innovative ideas. – Achieves advanced qualifications and pursues professional and personal development. – Maintains exemplary working relationships with Council, Boards and Commissions, staff and citizens. – Keeps current on issues, laws, policies and trends in his/her field and smoothly implements changes.
<p>RESPECT FOR DIVERSITY: Acknowledges and respects human differences; values diverse points of view; encourages full participation; fosters fairness; nurtures dignity and respect for self and others.</p>	0	<ul style="list-style-type: none"> – Displays personal bias or engages in harassment. – Tolerates bias, unfairness or harassment in subordinates. – Lacks respect for diversity objectives. – Disregards the rights of others; treats others with disrespect. 	3 4	<ul style="list-style-type: none"> – Consistently treats others with courtesy, dignity and respect. – Does not condone bias or harassment in or outside of workplace. – Supports diversity objectives. – Contributes to staff cohesiveness and morale. 	7 8	<ul style="list-style-type: none"> – Admired for fairness and respectful treatment of all. – Ensures a climate of fairness and respect for human worth. – Pro-active leader who achieves concrete diversity objectives. – Leader and model contributor to staff cohesiveness and morale.
<p>TASK ACCOMPLISHMENT: Takes initiative; plans, prioritizes and achieves goals; fosters responsiveness to goals; nurtures service excellence.</p>	0	<ul style="list-style-type: none"> – Lacks initiative. – Unable to plan or prioritize. – Does not maintain good service levels. – Fails to get the job done. 	3 4	<ul style="list-style-type: none"> – Takes initiative to meet goals. – Plans/ prioritizes effectively. – Provides high quality services. – Always gets the job done. 	7 8	<ul style="list-style-type: none"> – Develops innovative ways to accomplish mission and goals. – Plans/ /prioritizes with exceptional skill and foresight. – Delivers superior services, even with limited resources. – Gets jobs done earlier and far better than expected

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
<p>TEAMWORK: Builds teams; contributes to team results; encourages open communication, collaboration and cooperation; learns from mistakes, celebrates successes; encourages individuals to contribute fully and be responsible for their actions.</p>	0	<ul style="list-style-type: none"> - Creates conflict, unwilling to work with others, puts self above team. - Fails to foster team goals; does not understand teamwork techniques. - Does not take direction well. 	3 4	<ul style="list-style-type: none"> - Reinforces others' efforts, meets personal commitments to team. - Fosters good teamwork. - Accepts and offers team direction. 	7 8	<ul style="list-style-type: none"> - Team builder, inspires cooperation and progress. - Talented mentor. Focuses goals and techniques for team. - Excels at accepting and offering team direction.
<p>LEADERSHIP: Organizes, motivates and develops employees to accomplish goals; balances work and personal goals; takes responsibility for own decisions and actions; is sensitive to the values and needs of others; effectively supervises subordinates; runs a healthy, accountable department; works to improve processes; sets specific and reasonable goals for self and staff, participates in city-wide initiatives.</p>	0	<ul style="list-style-type: none"> - Fails to motivate, train or develop subordinates. - Lacks ability to cope with or tolerate stress. - Inadequate communicator. - Tolerates hazards or unsafe practices. - Does not provide sufficient or timely guidance to subordinates. - Fails to set specific, achievable goals for self and employees. - Does not or grudgingly participates in broader City matters. - Does not respect employees. - Refuses to accept criticism and initiate change. - Acts politically protective of resources and personnel; does not take into account the greater good of the City. 	3 4	<ul style="list-style-type: none"> - Effectively motivates, trains and develops subordinates. - Organizes successfully, solves problems as they occur. - Sets and achieves useful, realistic goals. - Performs well in stressful situations. - Clear, timely communicator. - Ensures safety. - Routinely works with subordinates to improve their performance. - Employees are evaluated on time and are reasonably happy with their jobs. - Actively participates in and supports broader City initiatives. 	7 8	<ul style="list-style-type: none"> - Inspiring motivator and trainer, consistently builds winners; respects employees and their work yet holds employees accountable. - Superb organizer, great foresight, gets ahead of problems. - Leadership achievements dramatically further Council goals. - Perseveres through the toughest challenges and inspires others. - Exceptional communicator. - Makes subordinates safety-conscious, maintains safety in the workplace. - Consistently improves the professional performance of subordinates. - Takes specific initiative to improve the employment climate in department. - Seeks out feedback; embraces change. - Initiates broad City initiatives to create a healthy work atmosphere in the City. - Dramatically improves working conditions and efficiency of the department.

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
INTEGRITY: Trustworthy; is honest in dealing with all individuals; treats people fairly; does what is right regardless of personal consequences; behavior conforms to standards of ethics.	0	Fails to live up to one or more of the listed standards of integrity 1 2	3 4	Consistently lives up to all of the listed standards of integrity 5 6	7 8	Is a role model for others in how to live up to the standards of integrity. 9 10

Part I CORE PERFORMANCE FACTOR COMMENTS Please provide specific examples.

Part II Job Specific Performance Factors

JOB SPECIFIC PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standards
RELATIONSHIP WITH CLIENTS: Maintains appropriate professional relationships with wide range of clients.	0	<ul style="list-style-type: none"> -Is uncomfortable to be with. -Causes others to use caution to avoid offending or angering. -Is distrustful and breeds distrust in others. -Violates confidences and confidentiality. -Inserts personal opinions into professional advice. 	3 4	<ul style="list-style-type: none"> -Is generally trusted, trusting, supportive of policy direction, contributive of overall goals. -Most clients feel comfortable requesting and receiving assistance. -Engenders trust and respect. -Maintains confidences and confidentiality. -Is reasonably fair and objective in dealing with persons representing all sides of an issue. 	7 8	<ul style="list-style-type: none"> -Is consistently trusted, trusting, supportive of policy direction, contributive of overall goals. -Wide range of clients find consistently comfortable to be with. -Engenders trust and respect. -Maintains confidences and confidentiality. -Is extremely fair and objective in dealing with persons representing all sides of an issue.
FACILITATION AND NEGOTIATION: Manages group interactions on behalf of the City.	0	<ul style="list-style-type: none"> -Disrupts group process and reinforces divisiveness and distrust. -People resent destructive behavior and tend to exclude him/her. -Tends to break down group consensus. -Inconsistent. -Handles conflict poorly. -Lacks tact and diplomacy. -Decisions are based on poor understanding of municipal law and poor analysis. 	3 4	<ul style="list-style-type: none"> -Is an asset to group problem-solving processes. -Breaks down barriers and helps people work better together. -Takes constructive approaches in most cases -Manages reasonable levels of conflict well -Generally exhibits tact and diplomacy -Decisions are founded in a good understanding of municipal law and good analysis. 	7 8	<ul style="list-style-type: none"> -A natural group leader. -Peers look to him/her for help in solving problems. -Consistently constructive. -Helpful without expecting personal recognition or gain. -Is instrumental in building group consensus. -Works well with others, and is consistent in the message given to all. -Handles serious conflict well. -Consistently exhibits tact and diplomacy. -Decisions are based on thorough knowledge of the law and analysis which is thorough and based on sound and reliable research and interpretation.

JOB SPECIFIC PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standards
DECISION MAKING UNDER STRESS: Makes sound, quick legal decisions; able to clarify points without consulting legal sources; Good on feet.	0	<ul style="list-style-type: none"> -Falls to pieces; has to be helped. -Cannot deal with complexity of decisions - Avoids coming to grips with situations. -“Ducks” difficult issues if possible; avoids them or pushes them off on others. -Tentative and indecisive. -Pedestrian thinking. 	3 4	<ul style="list-style-type: none"> -Generally able to provide legal advice under pressure. -Good at dealing with reasonably complex issues. -Needs only occasional assistance or reference to sources to respond to requests for quick decisions. -Reasonably cautious, reasonably courageous. 	7 8	<ul style="list-style-type: none"> -Keeps head when others are losing theirs. -Makes best decisions under stress. -Courageous. -Resolute. -Faces up to difficult issues and deals effectively with them. -Self-motivated and confident. -Creative thinking.
COMMUNITY AWARENESS: Engages in community outreach; looks for opportunities to nurture and expand programs to benefit the populace.	0	<ul style="list-style-type: none"> -Grudgingly responds to citizens. -Insular, unresponsive, delayed and unprepared for predictable or foreseeable outcomes of decisions impacting communities. -Disconnected. 	3 4	<ul style="list-style-type: none"> --Responsive, timely to community requests for information. -Uses data to serve communities. -Meets minimum community obligations. -Uses existing methods to remain aware. -Holds membership in community/municipal professional associations. -Responds to requests from community to speak, inform, educate. -Attends regular meetings with community stakeholders in neighborhoods, companies and, non-profits. -Subscribes to municipal community development publications and media. 	7 8	<ul style="list-style-type: none"> -Engaged, participative, pro-active, strategic, anticipates. -Independently researches and offers options/alternatives. -Seeks out hidden/ underserved groups and solicits input. -Maintains effective relationships with key community leaders and leverages them to build consensus and achieve objectives. -Develops innovative ways to maintain awareness and expand community connection to the office. -Evaluates current awareness methods/ tools/ expectations and seeks to improve them on a continuous basis. -Serves as a model to staff encouraging their community involvement.

Part II JOB SPECIFIC PERFORMANCE COMMENTS: Please provide specific examples.

2014 Council Employee Performance Evaluation

Evaluation Period: July 1, 2013 – June 30, 2014

City Manager

Part I Core Performance Factors

Name of evaluator:

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
<p>PROFESSIONAL COMPETENCE: Possesses and applies professional skills and knowledge; continues to develop proficiency; cultivates necessary relationships within and outside the City organization.</p>	0	<ul style="list-style-type: none"> - Lacks professional knowledge to perform effectively. - Cannot apply basic skills. - Fails to develop professionally. - Flawed relationships with Council, Boards and Commissions, staff; grudging in responses to citizens. 	3 4	<ul style="list-style-type: none"> - Has thorough professional knowledge; keeps up with changes in the field, including mandatory continuing education. - Competently performs both routine and new tasks. - Steadily improves skills. - Maintains good working relationships with Council, Boards and Commissions, staff and citizens. 	7 8	<ul style="list-style-type: none"> - Extensive knowledge in field, recognized leader in field, sought after to solve difficult problems or to speak in field. - Exceptionally skilled, develops and executes innovative ideas. - Achieves advanced qualifications and pursues professional and personal development. - Maintains exemplary working relationships with Council, Boards and Commissions, staff and citizens. - Keeps current on issues, policies, laws and trends in his/her field and smoothly implements changes.
<p>RESPECT FOR DIVERSITY: Acknowledges and respects human differences; values diverse points of view; encourages full participation; fosters fairness; nurtures dignity and respect for self and others.</p>	0	<ul style="list-style-type: none"> - Displays personal bias or engages in harassment. - Tolerates bias, unfairness or harassment in subordinates. - Lacks respect for diversity objectives. - Disregards the rights of others; treats others with disrespect. 	3 4	<ul style="list-style-type: none"> - Consistently treats others with courtesy, dignity and respect. - Does not condone bias or harassment in or outside of workplace. - Supports diversity objectives. - Contributes to staff cohesiveness and morale. 	7 8	<ul style="list-style-type: none"> - Admired for fairness and respectful treatment of all. - Ensures a climate of fairness and respect for human worth. - Pro-active leader who achieves concrete diversity objectives. - Leader and model contributor to staff cohesiveness and morale.
<p>TEAMWORK: Builds teams; contributes to team results; encourages open communication, collaboration and cooperation; learns from mistakes, celebrates successes; encourages individuals to contribute fully and be responsible for their actions.</p>	0	<ul style="list-style-type: none"> - Creates conflict, unwilling to work with others, puts self above team. - Fails to foster team goals; does not understand teamwork techniques. - Does not take direction well. 	3 4	<ul style="list-style-type: none"> - Reinforces others' efforts, meets personal commitments to team. - Fosters good teamwork. - Accepts and offers team direction. 	7 8	<ul style="list-style-type: none"> - Team builder, inspires cooperation and progress. - Talented mentor, focuses goals and techniques for team. - Excels at accepting and offering team direction.

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
<p>TASK ACCOMPLISHMENT: Takes initiative; plans, prioritizes and achieves goals; fosters responsiveness to goals; nurtures service excellence.</p>	0	<ul style="list-style-type: none"> - Lacks initiative. - Unable to plan or prioritize. - Does not maintain good service levels. - Fails to get the job done. 	3 4	<ul style="list-style-type: none"> - Takes initiative to meet goals. - Plans/ prioritizes effectively. - Provides high quality services. - Always gets the job done. 	7 8	<ul style="list-style-type: none"> - Develops innovative ways to accomplish mission and goals. - Plans/ /prioritizes with exceptional skill and foresight. - Delivers superior services, even with limited resources. - Gets jobs done earlier and far better than expected
<p>LEADERSHIP: Organizes, motivates and develops employees to accomplish goals; balances work and personal goals; takes responsibility for own decisions and actions; is sensitive to the values and needs of others; effectively supervises subordinates; runs a healthy, accountable department; works to improve processes; sets specific and reasonable goals for self and staff, participates in city-wide initiatives.</p>	0	<ul style="list-style-type: none"> - Fails to motivate, train or develop subordinates. - Lacks ability to cope with or tolerate stress. - Inadequate communicator. - Tolerates hazards or unsafe practices. - Does not provide sufficient or timely guidance to subordinates. - Fails to set specific, achievable goals for self and employees. - Does not or grudgingly participates in broader City matters. - Does not respect employees. - Refuses to accept criticism and initiate change. - Acts politically protective of resources and personnel; does not take into account the greater good of the City. 	3 4	<ul style="list-style-type: none"> - Effectively motivates, trains and develops subordinates. - Organizes successfully, solves problems as they occur. - Sets and achieves useful, realistic goals. - Performs well in stressful situations. - Clear, timely communicator. - Ensures safety. - Routinely works with subordinates to improve their performance. - Employees are evaluated on time and are reasonably happy with their jobs. - Actively participates in and supports broader City initiatives. 	7 8	<ul style="list-style-type: none"> - Inspiring motivator and trainer, consistently builds winners; respects employees and their work yet holds employees accountable. - Superb organizer, great foresight, gets ahead of problems. - Leadership achievements dramatically further Council goals. - Perseveres through the toughest challenges and inspires others. - Exceptional communicator. - Makes subordinates safety-conscious, maintains safety in the workplace. - Consistently improves the professional performance of subordinates. - Takes specific initiative to improve the employment climate in department. - Seeks out feedback; embraces change. - Initiates broad City initiatives to create a healthy work atmosphere in the City. - Dramatically improves working conditions and efficiency of the department.
<p>INTEGRITY: Trustworthy; is honest in dealing with all individuals; treats people fairly; does what is right regardless of personal consequences; behavior conforms to standards of ethics.</p>	0	Fails to live up to one or more of the listed standards of integrity	3 4	Consistently lives up to all of the listed standards of integrity	7 8	Is a role model for others in how to live up to the standards of integrity

Part I CORE PERFORMANCE FACTOR COMMENTS Please provide specific examples.

Part II Job Specific Performance Factors

JOB SPECIFIC PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standards
<p>FACILITATION AND NEGOTIATION: Manages group interactions on behalf of the City.</p>	0	<ul style="list-style-type: none"> -Disrupts group process and reinforces divisiveness and distrust. -People resent destructive behavior and tend to exclude him/her. -Tends to break down group consensus. -Inconsistent. -Handles conflict poorly. -Lacks tact and diplomacy. -Decisions are based on poor understanding of municipal policy and poor analysis. 	3 4	<ul style="list-style-type: none"> -Is an asset to group problem-solving processes. -Breaks down barriers and helps people work better together. -Takes constructive approaches in most cases -Manages reasonable levels of conflict well -Generally exhibits tact and diplomacy -Decisions are founded in a good understanding of municipal policy and good analysis. 	7 8	<ul style="list-style-type: none"> -A natural group leader. -Peers look to him/her for help in solving problems. -Consistently constructive. -Helpful without expecting personal recognition or gain. -Is instrumental in building group consensus. -Works well with others, and is consistent in the message given to all. -Handles serious conflict well. -Consistently exhibits tact and diplomacy. -Decisions are based on thorough knowledge of policy and analysis which is thorough and based on sound and reliable research and interpretation.
<p>DECISION MAKING UNDER STRESS: Makes sound, quick decisions; able to clarify points without consulting sources; good on feet.</p>	0	<ul style="list-style-type: none"> -Falls to pieces; has to be helped. -Cannot deal with complexity of decisions - avoids coming to grips with situations. -“Ducks” difficult issues if possible; avoids them or pushes them off on others. -Tentative and indecisive. -Pedestrian thinking. 	3 4	<ul style="list-style-type: none"> -Generally able to provide policy advice under pressure. -Good at dealing with reasonably complex issues. -Needs only occasional assistance or reference to sources to respond to requests for quick decisions. -Reasonably cautious, reasonably courageous. 	7 8	<ul style="list-style-type: none"> -Keeps head when others are losing theirs. -Makes best decisions under stress. -Courageous. -Resolute. -Faces up to difficult issues and deals effectively with them. -Self-motivated and confident. -Creative thinking.

JOB SPECIFIC PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standards
<p>COMMUNITY AWARENESS Engages in community outreach; looks for opportunities to nurture and expand programs to benefit the populace.</p>	<p>0</p>	<p>-Grudgingly responds to citizens. -Insular, unresponsive, delayed and unprepared for predictable or foreseeable outcomes of decisions impacting communities. -Disconnected.</p> <p>1 2</p>	<p>3 4</p>	<p>-Responsive, timely to community requests for information. -Uses data to serve communities. -Meets minimum community obligations. -Uses existing methods to remain aware. -Holds membership in community/municipal professional associations. -Responds to requests from community to speak, inform, educate. -Attends regular meetings with community stakeholders in neighborhoods, companies and, non-profits. -Subscribes to municipal community development publications and media.</p> <p>5 6</p>	<p>7 8</p>	<p>-Engaged, participative, pro-active, strategic, anticipates. -Independently researches and offers options/alternatives. -Seeks out hidden/ underserved groups and solicits input. -Maintains effective relationships with key community leaders and leverages them to build consensus and achieve objectives. -Develops innovative ways to maintain awareness and expand community connection to the office. -Evaluates current awareness methods/ tools/ expectations and seeks to improve them on a continuous basis. -Serves as a model to staff encouraging their community involvement.</p> <p>9 10</p>

Part II JOB SPECIFIC PERFORMANCE FACTOR COMMENTS Please provide specific examples.

2014 Council Employee Performance Evaluation
Form Evaluation Period: July 1, 2013 – June 30, 2014
Municipal Court Judge

Part I Core Performance Factors

Name of evaluator:

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
<p>PROFESSIONAL COMPETENCE: Possesses and applies professional skills and knowledge; continues to develop proficiency; cultivates necessary relationships within and outside the City organization.</p>	0	<ul style="list-style-type: none"> – Lacks professional knowledge to perform effectively. – Cannot apply basic skills. – Fails to develop professionally. – Flawed relationships with Council, Boards and Commissions, staff; grudging in responses to citizens. 	3 4	<ul style="list-style-type: none"> – Has thorough professional knowledge; keeps up with changes in the field, including mandatory continuing education. – Competently performs both routine and new tasks. – Steadily improves skills. – Maintains good working relationships with Council, Boards and Commissions, staff and citizens. 	7 8	<ul style="list-style-type: none"> – Extensive knowledge in field, recognized leader in field, sought after to solve difficult problems or to speak in field. – Exceptionally skilled, develops and executes innovative ideas. – Achieves advanced qualifications and pursues professional and personal development. – Maintains exemplary working relationships with Council, Boards and Commissions, staff and citizens. – Keeps current on issues, laws, policies and trends in his/her field and smoothly implements changes.
<p>RESPECT FOR DIVERSITY: Acknowledges and respects human differences; values diverse points of view; encourages full participation; fosters fairness; nurtures dignity and respect for self and others.</p>	0	<ul style="list-style-type: none"> – Displays personal bias or engages in harassment. – Tolerates bias, unfairness or harassment in subordinates. – Lacks respect for diversity objectives. – Disregards the rights of others; treats others with disrespect. 	3 4	<ul style="list-style-type: none"> – Consistently treats others with courtesy, dignity and respect. – Does not condone bias or harassment in or outside of workplace. – Supports diversity objectives. – Contributes to staff cohesiveness and morale. 	7 8	<ul style="list-style-type: none"> – Admired for fairness and respectful treatment of all. – Ensures a climate of fairness and respect for human worth. – Pro-active leader who achieves concrete diversity objectives. – Leader and model contributor to staff cohesiveness and morale.
<p>TEAMWORK: Builds teams; contributes to team results; encourages open communication, collaboration and cooperation; learns from mistakes, celebrates successes; encourages individuals to contribute fully and be responsible for their actions.</p>	0	<ul style="list-style-type: none"> – Creates conflict, unwilling to work with others, puts self above team. – Fails to foster team goals; does not understand teamwork techniques. – Does not take direction well. 	3 4	<ul style="list-style-type: none"> – Reinforces others' efforts, meets personal commitments to team. – Fosters good teamwork. – Accepts and offers team direction. 	7 8	<ul style="list-style-type: none"> – Team builder, inspires cooperation and progress. – Talented mentor, focuses goals and techniques for team. – Excels at accepting and offering team direction.

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
<p>TASK ACCOMPLISHMENT: Takes initiative; plans, prioritizes and achieves goals; fosters responsiveness to goals; nurtures service excellence.</p>	0	<ul style="list-style-type: none"> - Lacks initiative. - Unable to plan or prioritize. - Does not maintain good service levels. - Fails to get the job done. 	3 4	<ul style="list-style-type: none"> - Takes initiative to meet goals. - Plans/ prioritizes effectively. - Provides high quality services. - Always gets the job done. 	7 8	<ul style="list-style-type: none"> - Develops innovative ways to accomplish mission and goals. - Plans/ /prioritizes with exceptional skill and foresight. - Delivers superior services, even with limited resources. - Gets jobs done earlier and far better than expected
<p>LEADERSHIP: Organizes, motivates and develops employees to accomplish goals; balances work and personal goals; takes responsibility for own decisions and actions; is sensitive to the values and needs of others; effectively supervises subordinates; runs a healthy, accountable department; works to improve processes; sets specific and reasonable goals for self and staff, participates in city-wide initiatives.</p>	0	<ul style="list-style-type: none"> - Fails to motivate, train or develop subordinates. - Lacks ability to cope with or tolerate stress. - Inadequate communicator. - Tolerates hazards or unsafe practices. - Does not provide sufficient or timely guidance to subordinates. - Fails to set specific, achievable goals for self and employees. - Does not or grudgingly participates in broader City matters. - Does not respect employees. - Refuses to accept criticism and initiate change. - Acts politically protective of resources and personnel; does not take into account the greater good of the City. 	3 4	<ul style="list-style-type: none"> - Effectively motivates, trains and develops subordinates. - Organizes successfully, solves problems as they occur. - Sets and achieves useful, realistic goals. - Performs well in stressful situations. - Clear, timely communicator. - Ensures safety. - Routinely works with subordinates to improve their performance. - Employees are evaluated on time and are reasonably happy with their jobs. - Actively participates in and supports broader City initiatives. 	7 8	<ul style="list-style-type: none"> - Inspiring motivator and trainer, consistently builds winners; respects employees and their work yet holds employees accountable. - Superb organizer, great foresight, gets ahead of problems. - Leadership achievements dramatically further Council goals. - Perseveres through the toughest challenges and inspires others. - Exceptional communicator. - Makes subordinates safety-conscious, maintains safety in the workplace. - Consistently improves the professional performance of subordinates. - Takes specific initiative to improve the employment climate in department. - Seeks out feedback; embraces change. - Initiates broad City initiatives to create a healthy work atmosphere in the City. - Dramatically improves working conditions and efficiency of the department.

CORE PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standard
INTEGRITY: Trustworthy; is honest in dealing with all individuals; treats people fairly; does what is right regardless of personal consequences; behavior conforms to standards of ethics.	0	Fails to live up to one or more of the listed standards of integrity 1 2	3 4	Consistently lives up to all of the listed standards of integrity 5 6	7 8	Is a role model for others in how to live up to the standards of integrity 9 10

Part I CORE PERFORMANCE FACTOR COMMENTS:

Part II Job Specific Performance Factors

JOB SPECIFIC PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standards
<p>IMPARTIALITY: Displays fairness and impartiality in rulings; makes decisions without regard to outside influences; treats all individuals equally regardless of race, gender, age or other factors.</p>	0	<ul style="list-style-type: none"> -Is uncomfortable to be with. -Causes others to use caution to avoid offending or angering. -Is distrustful and breeds distrust in others. -Violates confidences and confidentiality. -Inserts personal opinions into professional advice. 	3 4	<ul style="list-style-type: none"> -Is generally trusted, trusting, supportive of policy direction, contributive of overall goals. -Most clients feel comfortable requesting and receiving assistance. -Engenders trust and respect. -Maintains confidences and confidentiality. -Is reasonably fair and objective in dealing with persons representing all sides of an issue. 	7 8	<ul style="list-style-type: none"> -Is consistently trusted, trusting, supportive of policy direction, contributive of overall goals. -Wide range of clients find consistently comfortable to be with. -Engenders trust and respect. -Maintains confidences and confidentiality. -Is extremely fair and objective in dealing with persons representing all sides of an issue.
<p>JUDICIAL DEMEANOR: Displays a courteous and professional demeanor; conforms to the judicial code of ethics; communicates court processes and rulings.</p>	0	<ul style="list-style-type: none"> -Disrupts group process and reinforces divisiveness and distrust. -People resent destructive behavior and tend to exclude him/her. -Tends to break down group consensus. -Inconsistent. -Handles conflict poorly. -Lacks tact and diplomacy. -Decisions are based on poor understanding of municipal law and poor analysis. 	3 4	<ul style="list-style-type: none"> -Is an asset to group problem-solving processes. -Breaks down barriers and helps people work better together. -Takes constructive approaches in most cases -Manages reasonable levels of conflict well -Generally exhibits tact and diplomacy -Decisions are founded in a good understanding of municipal law and good analysis. 	7 8	<ul style="list-style-type: none"> -A natural group leader. -Peers look to him/her for help in solving problems. -Consistently constructive. -Helpful without expecting personal recognition or gain. -Is instrumental in building group consensus. -Works well with others, and is consistent in the message given to all. -Handles serious conflict well. -Consistently exhibits tact and diplomacy. -Decisions are based on thorough knowledge of the law and analysis which is thorough and based on sound and reliable research and interpretation.

JOB SPECIFIC PERFORMANCE FACTORS	0 Cannot Rate/ Not Observed	1-2 Below Standard	3-4 Slightly Below Standard	5-6 Meets Standard	7-8 Slightly Exceeds Standard	9-10 Exceeds Standards
<p>COMMUNITY AWARENESS: Engages in community outreach; uses the courtroom as a forum for public education; looks for opportunities to nurture and expand programs to benefit the populace.</p>	0	<ul style="list-style-type: none"> -Grudgingly responds to citizens. -Insular, unresponsive, delayed and unprepared for predictable or foreseeable outcomes of decisions impacting communities. -Disconnected. 	3 4	<ul style="list-style-type: none"> -Responsive, timely to community requests for information. -Uses data to serve communities. -Meets minimum community obligations. -Uses existing methods to remain aware. -Holds membership in community/municipal professional associations. -Responds to requests from community to speak, inform, educate. -Attends regular meetings with community stakeholders in neighborhoods, companies and, non-profits. -Subscribes to municipal community development publications and media. 	7 8	<ul style="list-style-type: none"> -Engaged, participative, pro-active, strategic, anticipates. -Independently researches and offers options/alternatives. -Seeks out hidden/ underserved groups and solicits input. -Maintains effective relationships with key community leaders and leverages them to build consensus and achieve objectives. -Develops innovative ways to maintain awareness and expand community connection to the office. -Evaluates current awareness methods/ tools/ expectations and seeks to improve them on a continuous basis. -Serves as a model to staff encouraging their community involvement.
<p>COURTROOM/CASE MANAGEMENT: Appears for court on time; maintains control in the courtroom; rules on cases, motions within a reasonable period of time; courtroom time is used efficiently</p>	0	<ul style="list-style-type: none"> - Fails to maintain control of the courtroom. - Fails to rule on matters in a timely manner. - Often late for court docket. - Inefficient in use of court time. 	3 4	<ul style="list-style-type: none"> - Punctual. - Maintains control in the courtroom. - Rulings are made in a reasonable period of time. - Uses court time efficiently. 	7 8	<ul style="list-style-type: none"> - Regularly prepares for court in advance. - Reliably prompt in making rulings. - Demonstrates initiative by seeking improved efficiency in court. - Consistently identifies and addresses inappropriate behavior in court, using contempt powers if necessary.

Part II JOB SPECIFIC PERFORMANCE COMMENTS:

City Manager Salaries - July, 2014

Organization	Population	Annual Actual Salary	Date of Last Pay Increase	City Paid Deferred Comp.	Annual Car Allowance	Annual Bonus Amount	Total Comp.*	# of Employees Managed	Years in Current Position	Vacation Days per Year
Arvada	107,700	\$206,769	6/30/14	\$0	\$6,600	\$0	\$213,369	675	3.6	18
Aurora	332,354	\$189,652	1/1/14	\$22,000	Car*	\$0	\$211,652	2,610	3	13
Colorado Springs	436,000	No Match**								
Denver	634,265	No Match**								
Fort Collins	143,986	\$237,708	1/6/14	\$30,902	\$9,000	\$0	\$277,610	1,293	9	35
Greeley	95,000	\$182,954	3/1/14	\$0	\$6,000	\$0	\$188,954	859	9	23
Lakewood	145,596	\$206,440	3/30/14	\$23,000	\$10,210	\$0	\$239,650	1,888	4	20
Longmont	90,219	\$178,500	4/15/13	\$10,000	\$5,000	\$4,375	\$197,875	812	2	15
Loveland	72,846	\$174,990	12/14/13	\$0	\$6,000	\$0	\$180,990	763	3.8	20
Thornton	122,820	\$212,158	12/29/13	\$0	\$6,600	\$10,035	\$228,793	829	29	30
Westminster	107,967	\$203,352	1/1/14	\$23,000	\$9,000	\$0	\$235,352	1,932	13	17.4***
Average:		\$199,169					\$219,361			22
Boulder	103,650	\$208,630	6/24/13	\$0	\$0	\$0	\$208,630	1,250	5.7	29

*Total Compensation - includes salary, deferred compensation, car allowance and bonus. (Aurora - excludes value of car)

**Colorado Springs, Denver - No City Manager; have a strong-mayor form of government.

***Westminster - 10 hour days, 174 total hours

Note: "City Paid Deferred Comp." refers to compensation deferred into the future for certain employees beyond that provided to all employees. For example, the City pays 13.7% of employees' salaries toward a pension and the employee pays 8%. If the City chooses to pay the employee portion for selected employees (8%) that would be considered additional, deferred compensation for the employee. Since the City contributes 13.7% towards all employees, that amount is not considered deferred compensation.

City Attorney Salaries - July, 2014

Organization	Population	Annual Actual Salary	Date of Last Pay Increase	City Paid Deferred Comp.	Annual Car Allowance	Annual Bonus Amount	Total Comp.*	# of Employees Managed	Years in Current Position	Vacation Days per Year
Arvada	107,700	\$176,890	6/30/14	\$0	\$4,200	\$0	\$181,090	2	19	20
Aurora	332,354		vacant							
Colorado Springs	436,000	\$192,276	4/19/14	\$0	Car	\$0	\$192,276	0	>1	
Denver	634,265	\$190,000	1/1/14	\$0	N/A	\$0	\$190,000	200	6 mo.	18
Fort Collins	143,986	\$179,093	1/6/14	\$23,282	\$0	\$0	\$202,375	17	26	35
Greeley	95,000	\$158,700	1/1/14	\$0	\$0	\$0	\$158,700	7	2	26
Lakewood	145,596		contract position							
Longmont	90,219	\$161,988	12/23/13	\$9,123	\$3,587	\$0	\$174,698	7	5	18
Loveland	72,846	\$158,101	12/14/13	\$0	\$4,200	\$0	\$162,301	6	13	28
Thornton	122,820	\$166,497	12/29/13	\$0	\$4,404	\$7,875	\$178,776	8	19	30
Westminster	107,967	\$156,575	1/1/14	\$23,000	\$6,000	\$0	\$185,575	13	29	22.2**
Average:		\$171,124					\$180,643			25
Boulder	103,650	\$186,660	6/24/13	\$0	\$0	\$0	\$186,660	20	4	29

*Total Compensation - includes salary, deferred compensation, car allowance and bonus.

**Westminster - 10 hour days, 222 total hours

Note: "City Paid Deferred Comp." refers to compensation deferred into the future for certain employees beyond that provided to all employees. For example, the City pays 13.7% of employees' salaries toward a pension and the employee pays 8%. If the City chooses to pay the employee portion for selected employees (8%) that would be considered additional, deferred compensation for the employee. Since the City contributes 13.7% towards all employees, that amount is not considered deferred compensation.

Presiding Municipal Judge Salaries - July, 2014

Organization	Population	Annual Actual Salary	Date of Last Pay Increase	City Paid Deferred Comp.	Annual Car Allowance	Annual Bonus Amount	Total Comp.*	# of Employees Managed	Total # FTEs Judge(s)	Years in Current Position	Responsible for Court Admin?	Vacation Days per Year
Arvada	107,700	\$139,100	6/30/14	\$0	\$0	\$0	\$139,100	9	1	1	Yes	15
Aurora	332,354	\$137,214	1/1/14	\$10,613	\$0	\$0	\$147,827	1	5	9	No	30
Colorado Springs	436,000	**	7/1/08	n/a	\$0	\$0		1	4.5**	7	No	n/a
Denver	634,265	\$165,574	7/1/14	\$0	\$0	\$0	\$165,574	0	***	varies	No	varies
Fort Collins	145,596	\$131,449	1/6/14	\$12,407	\$0	\$0	****	7	0.8	25	No	30
Greeley	95,000	\$120,226	n/a	\$0	\$0	\$0	\$120,226	0	1	2	No	20
Lakewood	144,406	\$138,216	3/30/14	\$4,146	\$3,000	\$0	\$145,362	17	1	5	Yes	18
Longmont	90,219	\$123,948	1/1/14	\$0	\$0	\$0	\$123,948	7	1	28	Yes	21
Loveland	72,846	\$123,968	12/13/13	\$0	\$0	\$0	\$123,968	0	1	15.4	No	26
Thornton	122,820	\$132,903	12/29/13	\$0	\$0	\$6,286	\$139,189	0	1	25	No	21
Westminster	107,967	\$115,168	1/1/14	\$23,000	\$6,000	\$0	\$144,168	1	1.8	35	No	22.2*****
Average:		\$132,777					\$138,818					23
Boulder	103,650	\$135,000	06/25/12	\$0	\$0	\$0	\$135,000	1	1.5	13	No	29

*Total Compensation - includes salary, deferred compensation, car allowance and bonus.

**Colorado Springs - Part-time Presiding Judge @ \$42,363; 11 part time judges at .4167 FTE

***Denver - 17 incumbents; also 4 full-time and 10 part time County Court Magistrates

****Ft. Collins - Judge is 0.8 FTE, salary of \$105,159

*****Westminster - 10 hour days, 222 total hours

Note: "City Paid Deferred Comp." refers to compensation deferred into the future for certain employees beyond that provided to all employees. For example, the City pays 13.7% of employees' salaries toward a pension and the employee pays 8%. If the City chooses to pay the employee portion for selected employees (8%) that would be considered additional, deferred compensation for the employee. Since the City contributes 13.7% towards all employees, that amount is not considered deferred compensation.

2014 Base Pay Increase Ballot

City of Boulder - Council Employee 2014 Base Pay Increase Ballot

Please complete the 2014 Base Pay Increase Ballot for each of the three Council employees. There is a separate page for each employee so your choices will be tabulated for each employee separately. Each employee's current salary is located at the top of the page and percentage increase options are provided for your convenience.

1. Please provide your name

2014 Base Pay Increase Ballot

City Manager

Current Annual Salary for the City Manager - \$208,631

2. Shall an increase in base pay be authorized for the City Manager in 2014?

- Yes
- No

3. If an increase in base pay is granted, what is your recommended amount?

- 1% - \$ 2,086
- 2% - \$ 4,173
- 3% - \$ 6,259
- 4% - \$ 8,345
- 5% - \$10,432
- 6% - \$12,518
- 7% - \$14,604

Other (please specify)

2014 Base Pay Increase Ballot

City Attorney

Current Annual Salary for the City Attorney - \$186,666

4. Shall an increase in base pay be authorized for the City Attorney in 2014?

- Yes
- No

5. If an increase in base pay is granted, what is your recommended amount?

- 1% - \$1,867
- 2% - \$ 3,733
- 3% - \$ 5,600
- 4% - \$ 7,467
- 5% - \$ 9,333
- 6% - \$11,200
- 7% - \$13,067

Other (please specify)

2014 Base Pay Increase Ballot

Municipal Judge

Current annual salary for the Municipal Judge - \$135,007

6. Shall an increase in base pay be authorized for the Municipal Judge in 2014?

- Yes
- No

7. If an increase in base pay is granted, what is your recommended amount?

- 1% - \$ 1,350
- 2% - \$ 2,700
- 3% - \$ 4,050
- 4% - \$ 5,400
- 5% - \$ 6,750
- 6% - \$ 8,100
- 7% - \$ 9,450

Other (please specify)

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.

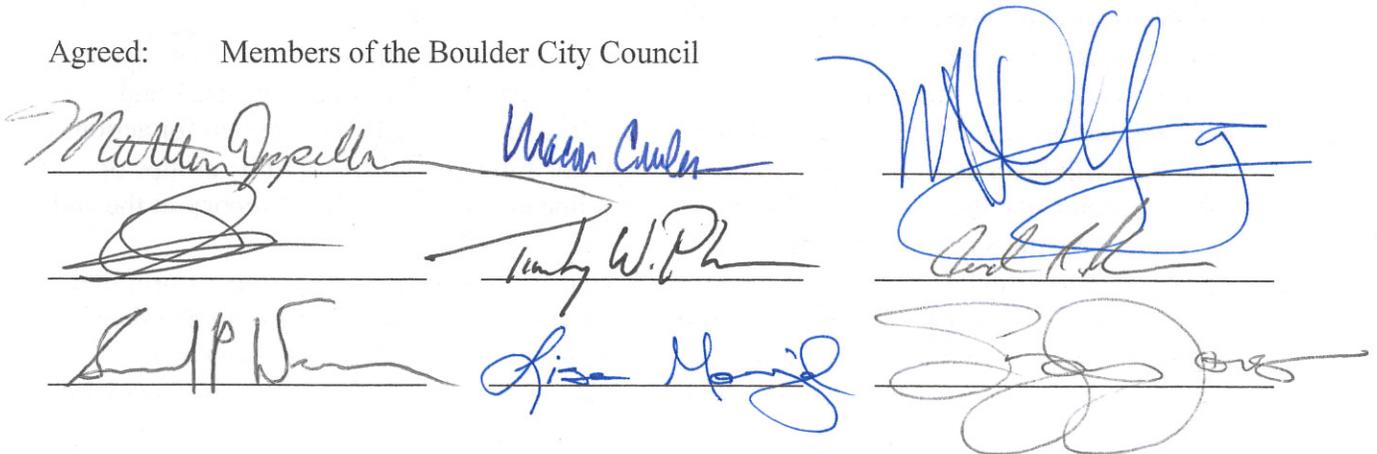
Council Committees:

- 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



Handwritten signatures of council members, including names like Matthew Appella, Nancy W. Ph..., and Lisa M..., arranged in three rows and three columns.

2014

2015

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Comprehensive Housing Strategy	Council	Briefing - with other related efforts, workplan	SS - objectives, recommended early action items	Briefing	Direction on policy options	Adopt strategy and action plan			
	Staff Activities	Housing choice analysis; needs assessment; best practices; trends data; workplan	Opportunity site inventory; potential tools with "bang for buck" analysis	Develop policy options and recommendations; stakeholder engagement					
North Boulder	Council	IP - update and preliminary policy choices	Briefing - options and feedback	Update and direction					
	Staff Activities	Public meeting with options	Preferred options and refined action plan	Action plan					
East Arapahoe/Sustainable Streets and Centers	Council		Briefing - issues, scope, and feedback	SS - preferred scenarios, draft plan, and action plan	Plan "Lite" - council action	Next Corridor - 30th St or Colorado			
	Staff Activities	Joint East Arapahoe workshop to "test" planning workshop	East Arapahoe scope of work, public workshop, scenario modeling, character definition	Scenario refinement and recommendations	Develop East Arapahoe action plan				
Resilience	Council		Briefing - scope agenda		SS - scoping session	SS	Direction or IP	Direction or IP	Direction or IP
	Staff Activities	Agenda setting workshop 4/28	Hire Asst. City Manager, begin strategy development	Scope strategy components	Scoping	Resilience work	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
Boulder Valley Comprehensive Plan	Council				SS - scoping session	SS	Direction or IP	Direction or IP	Direction or IP
	Staff Activities				Scoping analysis and partner outreach	Issues identification	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
Other	Council	Annexation Strategy - Direction (options and feedback)	Usable open space - Code Change	Economic Sustainability Strategy implementation - Code Change					
		Density/ROW Dedication Calculations - Code Change	Parking generation and reduction - Code Change						
		County Assessor valuations for landscape and lighting upgrades - Code Change	Renewable energy sources - Code Change						
	Staff Activities	Annexation Strategy - analyze costs and options	Planning Board for above code changes	Planning Board for above code changes					
Planning Board for above code changes									

HOUSING/LAND USE/PLANNING

		2014				2015				
Project	Council or Staff?	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
TRANSPORTATION	Transportation Master Plan	Council	IP (includes scope for AMPs)	SS (includes AMPS)	Acceptance - establish work program and coordination	Continue implementing pilots	Coordination with BVCP	Coordination with BVCP	Coordination with BVCP	Coordination with BVCP
		Staff Activities	Scenario and sensitivity analysis	Joint board workshop, TAB	Develop final update for board recommendation and council acceptance	Implement and coordination with BVCP and Resilience				
	Community EcoPass	Council	Feasibility Study - joint release with County	Rolls into TMP update						
		Staff Activities								
	Regional Transportation	Council	Briefing	Briefing		Briefing		Briefing		Briefing
		Staff Activities								
	Electric Vehicle Parking Ordinance/Energy Services	Council	Council agenda	SS			IP	IP	IP	IP
		Staff Activities								
	Access Management and Parking Strategies	Council	Scope	SS - Guiding principles, work program and process (includes TMP update)	Round 1 Code Changes - Auto and parking planning, zoning regs, EV charging stations	Update - Work plan and policy issues	Long Term Round 2 - Parking code changes and other policy issues	Council endorsement of ongoing work plan		
		Staff Activities	Finalize work program	Short term parking code regulation changes	Long term parking code changes	Long term parking code changes	Additional workplan items and public process tbd	Finalize document		
			TDM tool kit development for TMP integration	Long term parking code regulation changes	Additional workplan items tbd	Additional workplan items and public process tbd				
			Short term parking code ordinance changes	Public outreach and joint board meeting						
			Research/best practices	Additional workplan items tbd						
			Develop communications strategy							

ADD'L HOUS/PLAN/TRANS	Comp. Financial Strategy/Capital Bond	Council	Direction	SS	SS - finalize ballot?	Ballot?			
		Staff							
	Cap. Bond 1 Implement.	Staff		Construction			85% complete		100% Complete
	Flood Recovery	Staff		Repairs and FEMA Reimbursement	FHWA/FEMA work	FHWA/FEMA work	Building Better Boulder		Building Better Boulder
	Boulder Junction Phase 1 Implementation	Staff			South side of Pearl opens	Ongoing redevelopment coordination		Goose Creek Bridge opens	Depot Square opens
	Boulder Junction Phase 2 - City owned site	Staff		Coordination	Coordination		Coordination		
	Yards mobilized to move for Pollard option	Staff		Grading, prairie dogs, moving	Final prep			Yards moves continue	
	Safe Routes to School	Staff			Public process to prioritize projects		Application		
Implement Transpo.Tax	Staff		Expand maintenance, hire						

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Homelessness/Human Services	Council Items	Shelter/ Funding: Update on position and relationship with Boulder Shelter; Shelter funding and issues update and other funders.	SS - Human Services Strategy Update and Homeless Action Plan (including funding priorities and partnerships)	IP - Homelessness Issues	SS - Human Services Strategy Update and Homeless Action Plan (including funding and service priorities)				
				Regional Planning update/services and housing					
				2014 Point in Time Report					
				SS - Services and Regional coordination update	IP - Services and Regional coordination	IP - Services and Regional	SS - Services and Regional coordination	SS - Services and Regional	IP - Services and Regional
	Staff Activities	Facilitate monthly Boulder Homeless Planning Group re:	HS Strategy Update and Homeless Action Plan Update	HS Strategy Update and Homeless Action Plan -					
		Convene regional meeting with Denver/Boulder/MDHI							
County Ten Year Plan meeting with focus on meeting housing		County Ten Year Plan meeting with focus on meeting housing							
Neighborhood/Park Events and Other Events	Council Items	GOCO grant application		GOCO grant acceptance					
					SS - Special Events with Street Closures and Block Party Permitting				
	Staff Activities	Review current PR permits and developm pilot program	Conduct pilot neighborhood event (link with Hill and GOCO school yard grant)	Conduct pilot neighborhood event	Review neighborhood park planning and event pilot success and plan schedule for 2015	Finalize nneighborhood event schedule for 2015	Conduct neighborhood events	Conduct neighborhood events	Review pilot program and propose permit changes required to make improvements
		Link with park planning outreach	Summer recreation programs - arts, music, health, wellness	Continue summer art series and volunteer events					
		GOCO school yard grant	Submit GOCO grant	GOCO grant award - start civic area community park					
			Review and analysis of existing special event permitting	Develop recommendations					
Arts	Council Items		SS - Library & Arts, including Community Cultural Plan				Adoption of Community Cultural Plan		
	Staff Activities		Work with new director						

LIVABILITY

2014

2015

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Code Enforcement	Council Items	SS	SS (includes Social Issues Strategy information)						
	Staff Activities								
University Hill	Council Items	IP - 14th St Public/Private Partnership	Update - 14th St Public/Private Partnership	Update - 14th St Public/Private Partnership					
		Bears/Trash							
	Staff Activities		SS - Hill Reinvestment Strategy	Update - Hill Reinvestment Strategy					
		14th St - Hill Alt. Mode survey	14th St - Finalize analysis and develop recommendation to proceed with the Global Agreement						
		14th St - Finalize LOI							
		14th St - Financial Analysis							
		14th St - Additional access analysis							
		14th St - Board outreach							
		Pilot Parklet Competition	Parklet Implementation						
		Outreach to CU and stakeholders for support of Reinvestment Strategy	Fox Theatre mural by CU students	start pilot RSD program (to run through 2016)					
Recommendation for staffing Strategy implementation and prelim. analysis of future org structure options	Hire a fixed term Hill Coordinator								
Civic Area	Council Items					SS - Park Program and Improvements			
	Staff Activities	Civic Activity Team established	Coordinate music in park series		Review summer series success and revise for 2015	Prepare first phase of park improvements for 2015	Conduct adult fitness and health classes	Conduct visitor event at civic area around art installations	
		Hire Civic Area staff for P&R	Add seasonal park staff for outdoor education and orientation		Expand Ready to Work crew	Revise summer programs and plan for 2015	Install temporary adult fitness playground	Coordinate horticulture gardens with Farmers' Market event	
		Prepare GOCO grant for nature play and park planning	Conduct volunteer event around upgrades to Peace Garden and edible plant exhibit		Complete park planning outreach	Conduct art competition for summer installation	Install south side nature play area		
		Work with Park Foundation to develop plan for art and entertainment	Coordinate with CU for partnership with GUB and Civic Area park plan		Develop 1% for Arts demonstration project in partnership with foundations and non-profits		Expand seasonal staffing and horticulture/edible garden displays		

LIVABILITY

		2014				2015			
Project	Council or Staff?	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
OPEN SPACE	Charter Issues	Council Items			Address disposition process and use of Realization Point for pro bike race				
		Staff Activities							
	Highway 93 Underpass	Council Items							
		Staff Activities			In process				
	Eldo to Walker Ranch	Council Items							
		Staff Activities	City/County review of contractor proposals for potential mountain bike connection	Routes - weather dependent					
	IBM Connector	Council Items							
		Staff Activities		City/County requirement complete and await railroad to replace bridge					
	Trailhead as part of transportation system	Council Items							
		Staff Activities			status update				
	Other or not categorized	Council Items							
		Staff Activities			additional signage				

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
OTHER	Council	IP							
		Develop preliminary management plan	Implement pilot plan	Monitoring	Evaluate long term forest management plan and EAB strategy	Management plan and response	Response	EAB	EAB
	Council	SS - Public/private partnership	Approval of MOU with St. Julien Partners	Update on negotiations with St. Julien Partners					
	Council		SS		SS		Public hearing		
	Council	IGA with CDOT/County for US 36 bikeway maintenance	Pilot dog waste composting project - Valmont and OSMP possible site	Transportation code changes for AMPS	Smoking ban - public hearing				
		IGA for bikeway maintenance/ US 36 enhancements	CEAP call up for Baseline Underpass east of Broadway	Comprehensive Annual Financial Report					
Old Pearl Street ROW vacation		DRCOG TIP Priorities for city applications	Appointment of independent auditor						
Transportation code changes - bike parking, TDM, etc.		Mobile food vehicles - ordinance change to expand podding in downtown	Update on investment policies - action						
NPP - zone expansions and removal			Modification of construction use tax filing - IP then action						
			Pearl Street Mall regulations - code changes						

2015 Study Session Calendar

	A	B	C	D	E	F	G
1	Date	Status	Topic		Location	Contacts	Materials Due
8	02/10/15	Approved	Briefing: Development Impact Fees (televised)	5-6 PM	Chambers	Susan Richstone/Melinda Melton	N/A
9	02/10/15	Approved	VRBOs	6-8PM	Chambers	Tom Carr/Heather Hayward	1/29/2015
10	02/10/15	Approved	Chautauqua Lease	8-9 PM	Chambers	Tom Carr/Heather Hayward	1/29/2015
11							
12	02/24/15	Approved	Briefing: Housing Update (televised)	5:00 - 6 PM	Chambers		N/A
13	02/24/15	Approved	TMP Implementation Follow Up	6-7:30 PM	Chambers	Kathleen Bracke/Rene Lopez	2/12/2015
14	02/24/15	Approved	Envision East Arapahoe - Review Analysis and Transportation Options	7:30-9 PM	Chambers	Leslie Ellis/Melinda Melton	2/12/2015
15							
16	03/05/15	Approved	Board and Commission Interviews (Thursday)	6-9 PM	1777 West	Alisa Lewis/Dianne Marshall	2/21/2015
17	03/10/15	Approved	Board and Commission Interviews	6-9 PM	1777 West	Alisa Lewis/Dianne Marshall	2/21/2015
18	03/12/15	Approved	Board and Commission Interviews (Thursday)	6-9 PM	1777 West	Alisa Lewis/Dianne Marshall	2/21/2015
19							
20	03/31/15	Approved	Sister City Dinner	5-7 PM	Lobby	Alisa Lewis/Dianne Marshall	3/1/2015
21	03/31/15	Tentative	Neonicotinoid Resolution (hold)	7-8:30 PM	Chambers	Rella Abernathy/Melinda Melton	3/19/2015
22							
23	04/14/15	Approved	Board and Commission Reception	5-6 PM	Lobby	Alisa Lewis/Dianne Marshall	4/6/2015
24	04/14/15	Approved	Fire Department Operations, Deployment, Light Rescue Vehicle Response and Master Plan update	6-7:30 PM	Chambers	Michael Calderazzo/Laurie Ogden	4/2/2015
25	04/14/15	Approved	Ballot Measures	7:30 - 9 PM	Chambers	Bob Eiche/Elena Lazarevska	4/2/2015
26							
27	04/28/15	Approved	Briefing: Housing Update	5-6 PM	Chambers	Jeff Yegian/Alyssa Ostrander	
28	04/28/15	Approved	Human Services Strategy	6-8 PM	Chambers	Wendy Schwartz/Randall Roberts	4/16/2015
29	04/28/15	Approved	Utility Rate Study: Key Questions and Guiding Principles	8-9:30 PM	Chambers	Eric Ameigh/Jeff Arthur/Rene Lopez	4/16/2015
30							
31	05/12/15	Approved	Boulder's Energy Future	6-9 PM	Chambers	Heidi Joyce/Heather Bailey	4/30/2015
32							
33	05/26/15	Approved	Briefing: Community Culture Plan	5-6 PM	Chambers	Matt Chasansky/Carrie Mills	N/A
34	05/26/15	Approved	Hill Reinvestment Strategy Update and Policy Direction	6-7:30 PM	Chambers	Molly Winter/Ruth Weiss	5/14/2015
35	05/26/15	Approved	AMPS Update	7:30-9 PM	Chambers	Molly Winter/Ruth Weiss	5/14/2015
36							
37	06/09/15	Approved	Housing Boulder	6-7:30 PM	Chambers	Jay Sugnet/Melinda Melton	5/28/2015
38	06/09/15	Tentative	Commercial/Industrial Energy Efficiency Ordinance Options	7:30-9 PM	Chambers	Kendra Tupper/Melinda Melton	

2015 Study Session Calendar

	A	B	C	D	E	F	G
1	Date	Status	Topic		Location	Contacts	Materials Due
39							
40	06/23/15	Council Recess	June 17-July 12				
41	06/30/15	Council Recess	June 17-July 12				
42							
43	07/14/15	Approved	Community Cultural Plan	6-7:30 PM	Chambers	Matt Chasansky/Carrie Mills	7/2/2015
44	07/14/15	Approved	Ballot Measures	7:30-9 PM	Chambers		7/2/2015
45							
46	07/28/15	OPEN	Briefing:				N/A
47	07/28/15	Approved	Climate Commitment Goal and Strategy Proposal	6-7:30 PM	The HUB	Brett KenCairn/Melinda Melton	7/16/2015
48	07/28/15	OPEN		7:30-9 PM			
49							
50	08/11/15	Approved	2016 CIP Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	7/30/2015
51	08/11/15	OPEN		7:30-9 PM	Chambers		
52							
53	08/25/15	OPEN	Briefing:		Chambers		N/A
54	08/25/15	OPEN		6-7:30 PM	Chambers		8/13/2015
55	08/25/15	OPEN		7:30-9 PM	Chambers		
56							
57	09/08/15	Approved	2016 Budget Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	8/27/2015
58	09/08/15	Tentative	Emerald Ash Borer	7:30-9 PM	Chambers	Kathleen Alexander/Sally Dieterich	8/27/2015
59							
60	09/22/15	OPEN	Briefing:		Chambers		N/A
61	09/22/15	Approved	2016 Budget Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	9/10/2015
62	09/22/15	OPEN		7:30-9 PM	Chambers		
63							
64	09/29/15	OPEN		6-7:30 PM	Chambers		9/17/2015
65	09/29/15	OPEN		7:30-9 PM	Chambers		
66							
67	10/13/15	OPEN		6-7:30 PM	Chambers		10/1/2015
68	10/13/15	OPEN		7:30-9 PM	Chambers		
69							
70	10/27/15	OPEN	Briefing:		Chambers		N/A
71	10/27/15	OPEN		6-7:30 PM	Chambers		10/15/2015
72	10/27/15	OPEN		7:30-9 PM	Chambers		
73							

2015 Study Session Calendar

	A	B	C	D	E	F	G
1	Date	Status	Topic		Location	Contacts	Materials Due
74	11/10/15	Approved	AMPS Update	6-7 PM	Chambers	Molly Winter/Ruth Weiss	10/29/2015
75	11/10/15	OPEN		7-9 PM	Chambers		
76							
77	11/24/15	Thanksgiving Holiday Week					
78							
79	12/08/15	Approved	Utility Rate Study: Preliminary Findings	6-7:30 PM	Chambers	Eric Ameigh/Jeff Arthur/Rene Lopez	11/25/2015
80	12/08/15	OPEN		7:30-9 PM	Chambers		
81							
82	12/22/15	Christmas Holiday Week					
83	12/29/15	New Years Holiday Week					

February 3, 2015			
Start Time: 6:00 PM Business Meeting			
Location: Council Chambers, 1777 Broadway			
Agenda Section	Item Name	Time	Minutes
SPECIAL PRESENTATIONS:	Acknowledge Western Disposal	10	Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
	1st reading Landmark Designation Ordinance for 747 12th Street		
	Council consideration of a motion to accept the Upper Boulder Slough Floodplain Mapping Study update		
	Summary of Financial Update on Jan 13		
	Resolution for Firefighter Benefit Trust		
PUBLIC HEARINGS:			
	Acquisition of Schnell property in Boulder Canyon	20	Minutes
	2nd Reading Smoking Ban on Selected City Properties	60	Minutes
MATTERS FROM CITY MANAGER:	Update on Implementation to Secure Trash and Curbside Compost from Bears	30	Minutes
	Authorization of the City Manager to Enter into a MOU Between CAGID and Trinity Lutheran for the Trinity Commons Project Parking	45	Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM COUNCIL MEMBERS:			Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	3.75	

February 17, 2015			
Start Time: 6:00 PM Business Meeting			
Location: Council Chambers, 1777 Broadway			
Agenda Section	Item Name	Time	Minutes
SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
	1st reading and public hearing of an ordinance to change certain BMS zoning district standards and uses as part of the University Hill Moratorium project		Minutes
	Study Session Summary for 1/27 University Hill Issues and Updates		Minutes
	BRC Supp 122 Emergency Ordinance		
PUBLIC HEARINGS:			
	Motion to transfer ownership of 4525 Palo Pkwy to BHP	90	Minutes
	Consideration of a Motion to Revise the City of Boulder's 2015 State and Federal Legislative Agenda	30	Minutes
MATTERS FROM CITY MANAGER:			
	Consideration of Draft Zero Waste Strategic Plan and Options for Commercial Recycling Ordinance	60	Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM COUNCIL MEMBERS:			Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	4.00	

March 3, 2015
Start Time: 6:00 PM Business Meeting
Location: Council Chambers, 1777 Broadway

SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
	1st Reading of Consideration of New Cable Franchise Agreement with Comcast		Minutes
			Minutes
			Minutes
PUBLIC HEARINGS:			
	2nd reading and public hearing of an ordinance to change certain BMS zoning district standards and uses as part of the University Hill Moratorium project	90	Minutes
	2nd reading Landmark Designation Ordinance for 747 12th Street	90	Minutes
MATTERS FROM CITY MANAGER:			Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:			Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	4.00	

March 17, 2015
Start Time: 6:00 PM Business Meeting
Location: Council Chambers, 1777 Broadway

Agenda Section	Item Name	Time	
SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
	Study Session Summary for 2/24 Envision East Arapahoe Plan		Minutes
	1st reading of an ordinance for the annexation of Old Tale Road neighborhood		Minutes
	Energy Future: 1st Reading Open Access Transmission Tariff		Minutes
	Disposal of Open Space property for power pole easement to Public Service		Minutes
PUBLIC HEARINGS:	3rd reading and public hearing of an ordinance to change certain BMS zoning district standards and uses as part of the University Hill Moratorium project	120	Minutes
MATTERS FROM CITY MANAGER:	Boulder Civic Area direction for Civic Area Master Plan and Parkland Site Plan	45	Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:	Board and Commission Appointments	60	Minutes
CALL-UPS:			Minutes
	Total Estimated Meeting Time (Hours)	4.75	

April 7, 2015
Start Time: 6:00 PM Business Meeting
Location: Council Chambers, 1777 Broadway

Agenda Section	Item Name	Time	Minutes
SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
			Minutes
			Minutes
PUBLIC HEARINGS:			Minutes
	Boulder Energy Future - 2nd Reading Open Access Transmission Tariff	90	Minutes
	2nd Reading of Ordinance to Approve Cable Franchise Agreement with Comcast	60	Minutes
MATTERS FROM CITY MANAGER:			Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:			Minutes
CALL-UPS:			Minutes
Total Estimated Meeting Time (Hours)		3.50	

April 21, 2015
Start Time: 6:00 PM Business Meeting
Location: Council Chambers, 1777 Broadway

Agenda Section	Item Name	Time	Minutes
SPECIAL PRESENTATIONS:			Minutes
OPEN COMMENT:		45	Minutes
CONSENT:		15	Minutes
			Minutes
			Minutes
PUBLIC HEARINGS:	2nd reading Ordinance for Annexation of Old Tale Road Neighborhood	30	Minutes
			Minutes
MATTERS FROM CITY MANAGER:	Motion to accept the Boulder County Age Well Plan Update	15	Minutes
MATTERS FROM CITY ATTORNEY:			Minutes
MATTERS FROM MAYOR AND MEMBERS:			Minutes
CALL-UPS:			Minutes
Total Estimated Meeting Time (Hours)		1.75	



TO: Members of Council
FROM: Mary Moline, City Clerk's Office
DATE: February 3, 2015
SUBJECT: Information Packet

1. CALL UPS

None

2. INFORMATION ITEMS

- A. Update on the Implementation of the Black Bear Protection Ordinance (No. 7962) and Expansion of the Curbside Compost Collection Program
- B. Update on Annexation of Flood Impacted Properties
- C. Broadway & Yarmouth Intersection Safety Concerns

3. BOARDS AND COMMISSIONS

- A. Human Relations Commission – January 26, 2015
- B. Open Space Board of Trustees – January 14, 2015

4. DECLARATIONS

- A. Mark Udall Appreciation



INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, 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
Colette Crouse, Communication Specialist
Kelle Boumansour, Residential Sustainability Specialist
Tom Trujillo, Boulder Police Department Commander
Jennifer Riley, Code Enforcement Supervisor

Date: Feb. 3, 2015

Subject: Information Item: Update on the implementation of the Black Bear Protection Ordinance (Ordinance No. 7962) 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 Protection Ordinance (Ordinance No. 7962, adopted by council on March 18, 2014) implementation efforts for 2014 and to inform council of the efforts planned for 2015.

This memo includes:

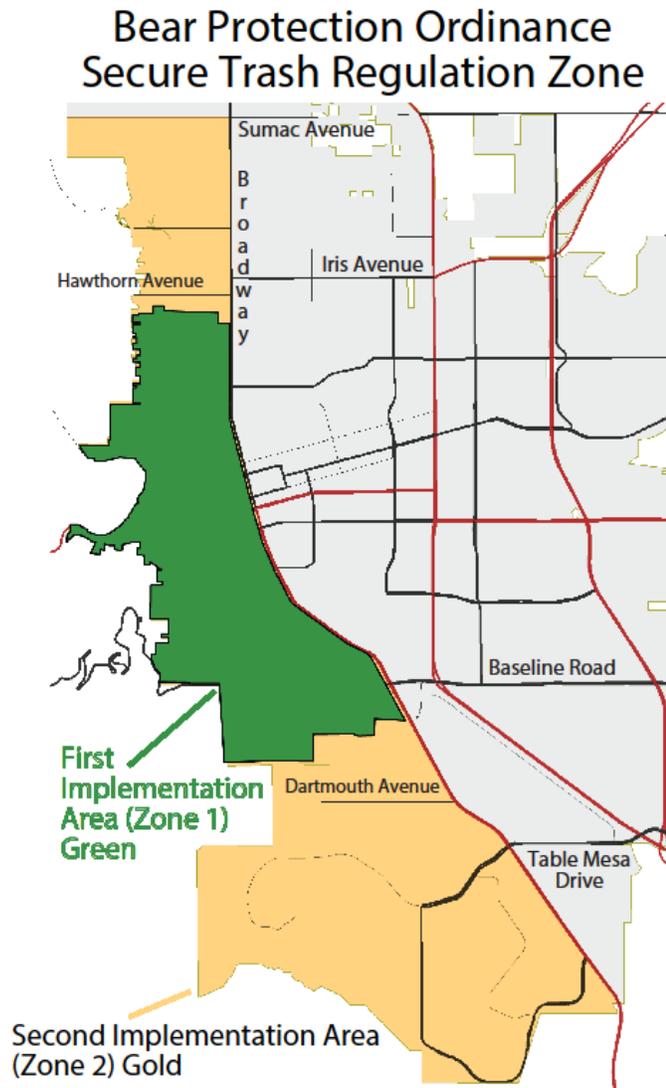
- Detailed information on the phased approach to implementing Ordinance No. 7962,
- Information on 2014 urban bear activity in comparison to the past five years,
- Information on waste disturbances by bears and waste cart monitoring, and
- An overview of efforts to increase waste diversion by introducing meat and dairy to curbside compost and educating residents about compost best practices.

Ordinance No. 7962 requires trash and curbside compost containers to be secure from bears at all times within the Secure Trash Regulation Zone. Phased implementation of the ordinance was coordinated with outreach efforts for curbside compost expansion. Implementation efforts began in the spring of 2014 and include the following three phases:

- **Phase I-** single family residences with approximately 6,000 trash and compost carts in Zone I effective Oct. 1, 2014.
- **Phase II-** commercial and multifamily units comprised of an estimated 460 dumpsters in Zone I, and single family residences with an estimated 8,700 trash and compost carts in Zone II, effective June 15, 2015.
- **Phase III-** commercial and multifamily units comprised of approximately 120 dumpsters in Zone II, and all city managed public waste containers in the entire Secure Trash Regulation Zone effective date to be determined.

Specific patterns identified in the 2014 urban bear report and monitoring data include:

- Bears had knocked over and strewn trash from fewer carts in 2014 (four carts) as compared to 2013 (116 carts) or 2012 (142 carts), and
- The proportion of bear reports north of the Secure Trash Regulation Zone (Sumac) were greater (13 reports) than previous years (eight reports total 2009 to 2013).



In addition to the staff monitoring and community reports suggesting there were fewer trash cart disturbances in 2014 compared to previous years, staff has received feedback from the

community that alleys west of Broadway look substantially cleaner and have had less trash strewn.

BACKGROUND

Bear Protection Ordinance

On March 18, 2014 council adopted Ordinance No. 7962 requiring trash and curbside compost containers to be secure from bears at all times in most of the city west of Broadway (see March 18, 2014 City Council agenda item titled: Consideration of a motion to adopt on third reading Ordinance No. 7962 www.documents.bouldercolorado.gov/weblink8/0/fol/446/Row1.aspxlink).

Implementation of the ordinance included the following elements:

- A phased approach beginning with alleys where waste containers are stored 24 hours a day, 7 days a week, and experience the most visible trash disturbances by bears;
- Hiring two additional Code Enforcement staff to support the new ordinance in addition to enforcing existing quality of life ordinances; and
- Monitoring the effectiveness of the ordinance, changes in enforcement, violations, and bear behavior.

Phased implementation

Due to the large area included in the ordinance, and thousands of trash and compost containers that need to be changed or modified, the ordinance is being implemented and enforced in a phased approach. The phased approach identifies two sub-areas, or zones within the entire Bear Secure Trash Regulation Zone. The first implementation area is the highest priority for securing waste from bears and includes properties with trash pick-up in alleys (Zone I). The second implementation area includes the remainder of the properties in the Regulation Zone (Zone II).

The phased approach includes the following locations, waste containers, and timeline:

- **Phase I-** single family residences in Zone I effective Oct. 1, 2014
- **Phase II-** commercial and multifamily units (dumpsters) in Zone I and single family residences in Zone II effective June 15, 2015
- **Phase III-** commercial and multifamily units (dumpsters) in Zone II effective date to be determined

Hiring additional Code Enforcement staff

Two additional Code Enforcement positions were created to execute the enforcement of Ordinance No. 7962 in addition to enforcing other laws that pertain to quality of life issues. An additional Officer was hired July 7, 2014 and fully trained by September 12. An Administrative Assistant was also hired and began work on Dec. 8, 2014. Both of these new positions are fully functional and address all code issue to include the bear ordinance.

Monitoring ordinance effectiveness, violations, and bear behavior

For the past six years the city has been maintaining a database of all reported bear sightings and the attractants associated with the bear activity. In addition, in 2012 & 2013, the city, in partnership with Colorado Parks and Wildlife (CPW), monitored compliance with trash ordinances and bear activity in waste containers in western Boulder as part of the Black Bear Education and Enforcement Pilot (for final report visit: www.boulderwildlifeplan.net “Background”). In 2014 city staff collected the same bear report data and attractant data as in previous years, and monitored trash violations and bear-resistant cart misuse. Similarly, CPW collected data on trash violations in the area established for the Pilot.

Factors that cloud interpreting cause and effect change in bear behavior

Urban bear behavior in Boulder can be highly variable from year to year and is dependent on a variety of dynamic environmental factors. For example, in wet years with no late spring freeze, food production in natural areas is high, and pressure on bears to search for human-based food sources in town is lower. Similarly, prior to 2008 (and particularly in 2007) bear activity in south Boulder seemed to be greater than bear activity in north Boulder. That pattern of behavior seems to have shifted in recent years, but not due to any programmatic, or environmental change. Sometimes individual bears and their offspring have a preference for an area and these individual preferences change over time. For these reasons, we cannot look at a season of bear activity after initiating a new waste storage program and identify changes in bear behavior as a result of the program. It is important to note there are factors independent of secure trash and compost containers that contributed to less urban bear activity in 2014. These factors include, good natural and domestic fruit tree production (though some of the drainages and fruit producing vegetation west of town were scoured by the flood of 2013); and four habituated bears were killed in Boulder in 2013 which lowered the number of bears in the area in 2014.

Introducing Meat and Dairy into Curbside Compost Collection

An important element of reaching the city’s zero waste goals while securing waste from bears has been coordinating the Bear Protection Ordinance and the introduction of meat and dairy into curbside compost. On April 17, 2014 City Manager Rule 6-12-9 A(14) was established to allow for meat and dairy to be included in curbside compost collection.

ANALYSIS

Phased ordinance implementation

Phase I of Ordinance No. 7962 implementation occurred in Zone I and focused on single family residential homes. This phase involved: notifying landowners, residents, and property managers about the ordinance requirements, working with local trash haulers to establish a feasible cart distribution and compliance timeline, and focused education and enforcement.

- **Notification**

In June 2014, 9,392 informational postcards (see *Attachment A*) were mailed to residents, property managers and landowners that were responsible for waste management in the approximate 7,000 residences and business in Zone I.

- **Bear-resistant container distribution**

During the months of June through September, approximately 3,100 trash, and 2,900 curbside compost bear-resistant carts were put in use at single family residences in Zone I.

- **Education and Enforcement**

In September, staff began monitoring bear-resistant cart use (see 2014 Waste Cart Monitoring section in Analysis). Staff observed a pattern of bear-resistant cart misuse (lids not being latched) and developed an educational door hanger to reinforce the importance of latching the carts (see *Attachment A*). These door hangers were distributed by Code Enforcement staff and Boulder Bear Coalition volunteers at locations where cart misuse was observed. On October 1, ordinance enforcement began. Between Oct. 1 and Dec. 1, Code Enforcement issued 245 warnings. Most of the warnings were for cart misuse but some were for not storing waste in a bear-resistant cart or enclosure. All properties where warnings were issued voluntarily complied and no summonses were issued.

Phase II of Ordinance No. 7962 implementation will occur in the spring of 2015, and will focus on dumpsters in Zone I, and single family residential homes in Zone II. The process of notification will be similar to activities in Phase I, and enforcement of this second phase will begin on June 15, 2015.

Phase II of Ordinance No. 7962 implementation efforts are expected to include:

- March 2015 mailing of informational postcards to residents, property managers, and landowners of the approximate 6,500 residences and businesses remaining in Zone II.
- Distribution of approximately 4,400 bear-resistant trash carts and 4,300 bear-resistant curbside compost carts throughout Zone II by June 1, 2015.
- Distribution of approximately 460 bear-resistant trash dumpsters in Zone I by June 1, 2015.
- Enforcement of ordinance requirements of dumpsters within Zone I, and single family residential properties within Zone II on June 15, 2015.

Collaboration a key component of successful implementation

Developing an implementation program for Ordinance No. 7962 involved a significant level of collaboration and support from local businesses, and other agencies. Community obstacles to securing trash from bears included: cost, local availability of carts, availability of bear-resistant

containers in all three sizes (32, 64, and 96 gallon), potential waste and environmental impact of purchasing thousands of manufactured bear-resistant carts rather than retro-fitting carts currently in use, service and product options for residents that wanted to store waste in structures or bear-resistant enclosures, service options for residents that wanted to maintain “pay-as-you-throw” services. Due to local waste haulers and businesses including Western Disposal, One-Way, CanShed and organizations such as Colorado Parks and Wildlife and the Boulder Bear Coalition actively participating in the ordinance development and implementation process, many obstacles could be addressed. The contributions of these organizations were key to the feasibility and success of implementation.

2014 urban bear activity

The city maintains a database of all urban bear sightings and reports. The number of reports varies from year to year and is not considered a representation of actual bear activity as much of the urban bear activity goes unreported. The bear report database is helpful in providing information on the pattern of urban bear activity over time and was also used to develop the Secure Trash Regulation Zone.

Reported bear activity from 2009 through 2013 showed only one report of a bear west of Broadway and north of Sumac (Wonderland Lake). In 2014, the pattern of activity looks different with several bear reports north of Sumac (see map **Attachment B**). The number of reports north of the Regulation Zone (Sumac) was greater (13 reports) than in previous years (8 reports total 2009 to 2013). Activity beyond the Regulation Zone will continue to be monitored and evaluated to determine whether 2014 trends will continue and necessitate expansion of the current Regulation Zone.

2014 waste cart monitoring

In 2012 and 2013 the City of Boulder partnered with Colorado Parks and Wildlife (CPW) to monitor trash violations including trash being strewn by bears in three neighborhoods as part of the Black Bear Education and Enforcement Pilot project (for Bear Education and Enforcement Pilot final report visit: www.boulderwildlifeplan.net “Background”). In the fall of 2014 staff monitored the same route including 612 single family homes for a reduced number of days in the fall. Staff conducted 12 days of monitoring and compared the data to 12 days of fall monitoring in 2012 and 2013. The monitoring showed fewer bear-trash conflicts in 2014 with only four carts being knocked over and strewn, compared to 116 and 142 carts knocked over in 2013 and 2012 respectively (see **Table I**). Additionally, CPW staff continued monitoring the Pilot area as defined in the Bear Education and Enforcement Pilot and summarized their observations with similar results (**Attachment C**).

Though enforcement of the ordinance did not begin until Oct. 1, 2014, most of the residences along the monitoring route had bear resistant carts when the monitoring began on September 16.

Staff also noted how many bear resistant carts had waste in them and were not latch/locked closed. There were 146 observations of carts not being latched. In these cases the carts were not overflowing, the lid had just not been pushed down to engage the locking mechanism.

Table I. Number of observed trash violations at 612 residences in the Bear Ordinance Regulation Zone between Sept. 16, and Oct. 30, over the past three years.

Year	Total Trash Violations	Unique Addresses	Bear-Caused Violations (Trash Strewn)	Percent of Total Caused by Bears
2012	145	113	142	97.9%
2013	120	71	116	96.7%
2014	42	35	4	11.6%

Introducing Meat and dairy to curbside compost

In April, 2014, a change to the City Manager’s rules expanded allowable materials in the curbside compost collection program to include meat and dairy. Staff coordinated community outreach efforts concerning curbside compost expansion with those efforts related to Ordinance No. 7962. Staff delivered integrated messaging where appropriate to impacted community members. Overall, curbside compost communications and outreach efforts have been well-received by the community, and city staff has heard positive feedback from a number of residents.

Between April and December, 2014, communications and outreach efforts to raise awareness of curbside compost expansion and to educate residents about Boulder’s community zero waste goal, the importance of composting, home composting tips and tricks, and allowable materials included:

- Updated residential compost guide, mailed by haulers to all curbside collection subscribers in the city
- Bear-shaped handout delivered by the University of Colorado Green Teams to residents in the student-heavy University Hill neighborhood, briefly introducing curbside compost expansion and bear-trash ordinance and enforcement details
- “Eat. Compost. Repeat” ads shown on display monitors at city facilities
- “What do you do with your food scraps?” topic on Inspire Boulder, requesting feedback on what residents know about curbside compost and what type of assistance would best support them in composting food scraps at home
- Feature on Channel 8 Inside Boulder News
- Tabling at Boulder Green Streets
- Participation in Boulder’s holiday parade—cooked turkey chased by a compost cart

- “Don’t be a Turkey” short video, shared through social media, community partners, and via the CU Environmental Center’s webpage around the Thanksgiving holiday to remind residents to compost meat food scraps
- Consistent messaging through social media

While it appears at the moment to affect only a small number of residents, staff has identified an unintended consequence of the pricing for bear-resistant carts. For haulers that either charge a monthly lease fee for each of the trash and compost carts; or for haulers that require customers to purchase their own bear-resistant carts; if a resident would like to save money, they could feasibly either refuse to pay for a compost cart or cancel their trash service altogether.

Staff will work with the haulers to monitor how many residents request to cancel compost or trash collection service as a way to save money on bear-resistant carts. This will inform future reports on ordinance effectiveness as well as recommendations in the Zero Waste Strategic Plan and its associated and Action Plan.

Supporting fruit harvest to reduce secondary urban bear attractants

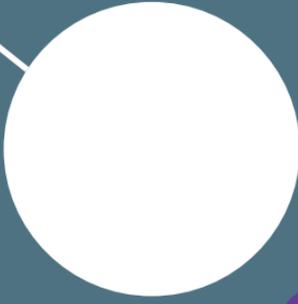
Trash has been the primary urban bear attractant for many years. As trash becomes less accessible to bears, the need to address secondary attractants becomes more pressing. The second greatest urban attractant to bears is fruit trees. This past summer and fall, the city supported Community Fruit Rescue (CFR) in their efforts to harvest ripe fruit from properties where landowners gave their permission because they were not picking all of their fruit. The city supplied 10 fruit picking tools for their use, and distributing information about the CFR service to private landowners where bears have accessed fruit.

NEXT STEPS

- Develop timeline for “Phase III” of implementation which will include dumpsters in Zone II, and public (street) waste receptacles in the Secure Trash Regulation Zone. This date is expected in late 2015, but has not yet been determined.
- Further develop monitoring protocol to evaluate ordinance effectiveness.

Attachments:

- A:** Educational Materials: Postcard and Door hanger
- B:** Map of Reported Bear Sightings 2009-2014
- C:** 2014 Colorado Parks & Wildlife Compliance Monitoring Report



PROTECT BOULDER'S BEARS

NEW CITY ORDINANCE

Your trash and compost must be secured at all times until it is collected by a trash hauler.

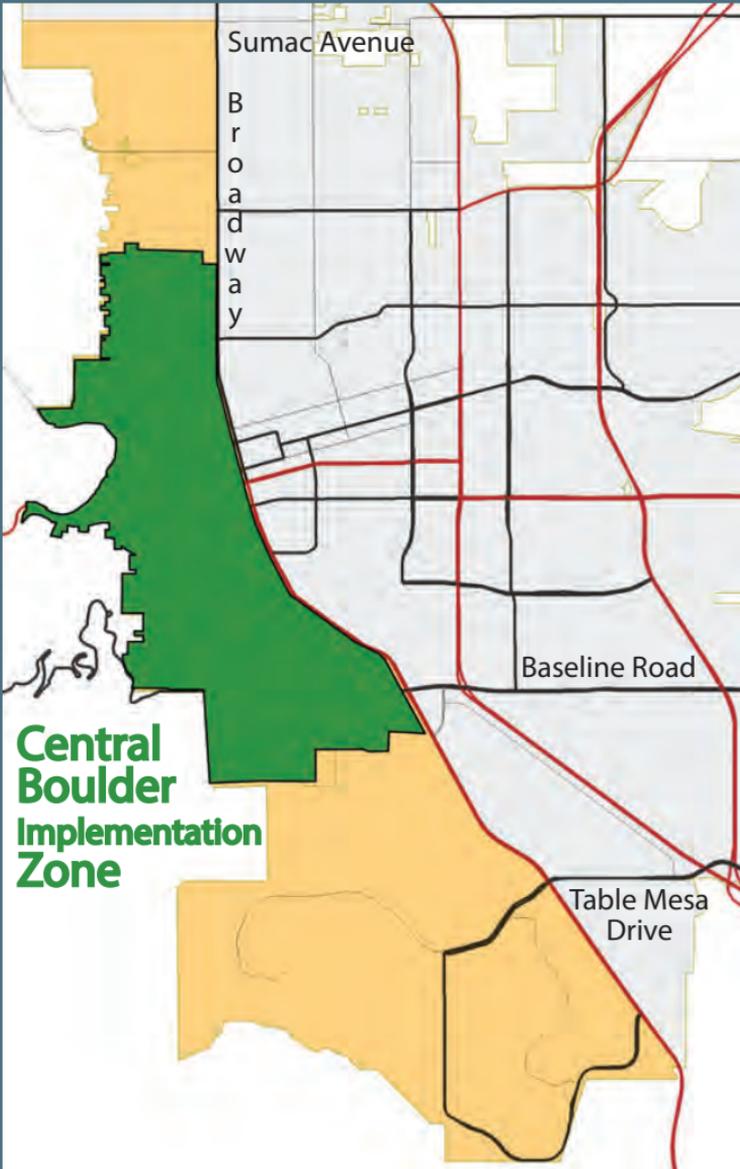
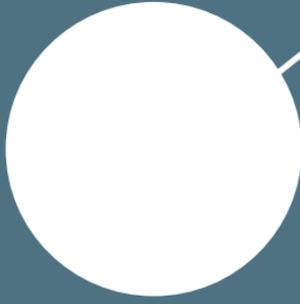
SECURE YOUR WASTE

All containers, dumpsters or enclosures must be bear-resistant.

OR

Waste must be stored in a house, garage, shed or other structure.

Storage requirements are available at www.boulderwildlifeplan.net. Waste haulers will provide details about the options and services.



Secure Trash Regulation Zone

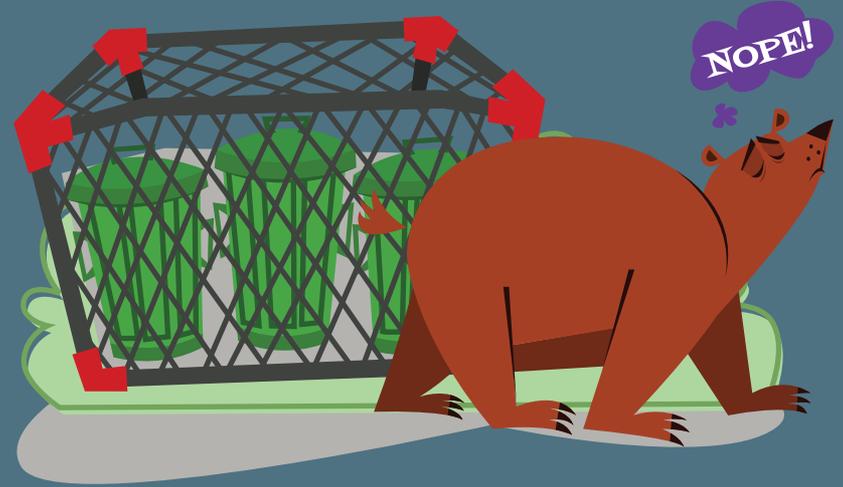
The ordinance applies to all properties west of Broadway to the western city limits, south of Sumac Avenue to the southern city limits.

In summer 2014, implementation of the new storage requirements will begin in central Boulder, including areas where waste is collected from alleys.

The fine for a first offenses is \$250. Code enforcement officers may issue tickets in-person or give citations to property owners via email, mail, or printed notification.



PROTECT BOULDER'S BEARS



NEW CITY OF BOULDER ORDINANCE

Your trash and compost must be secured at all times until it is collected by a trash hauler.

All containers, dumpsters or enclosures must be bear-resistant.

Information Item
Bear Protection Ordinance and Curbside Compost Collection



Storage requirements are available at www.boulderwildlifeplan.net. Waste haulers will provide details about the options and services.

Secure Trash Regulation Zone (Gold)

The ordinance applies to all properties west of Broadway to the western city limits, south of Sumac Avenue to the southern city limits.

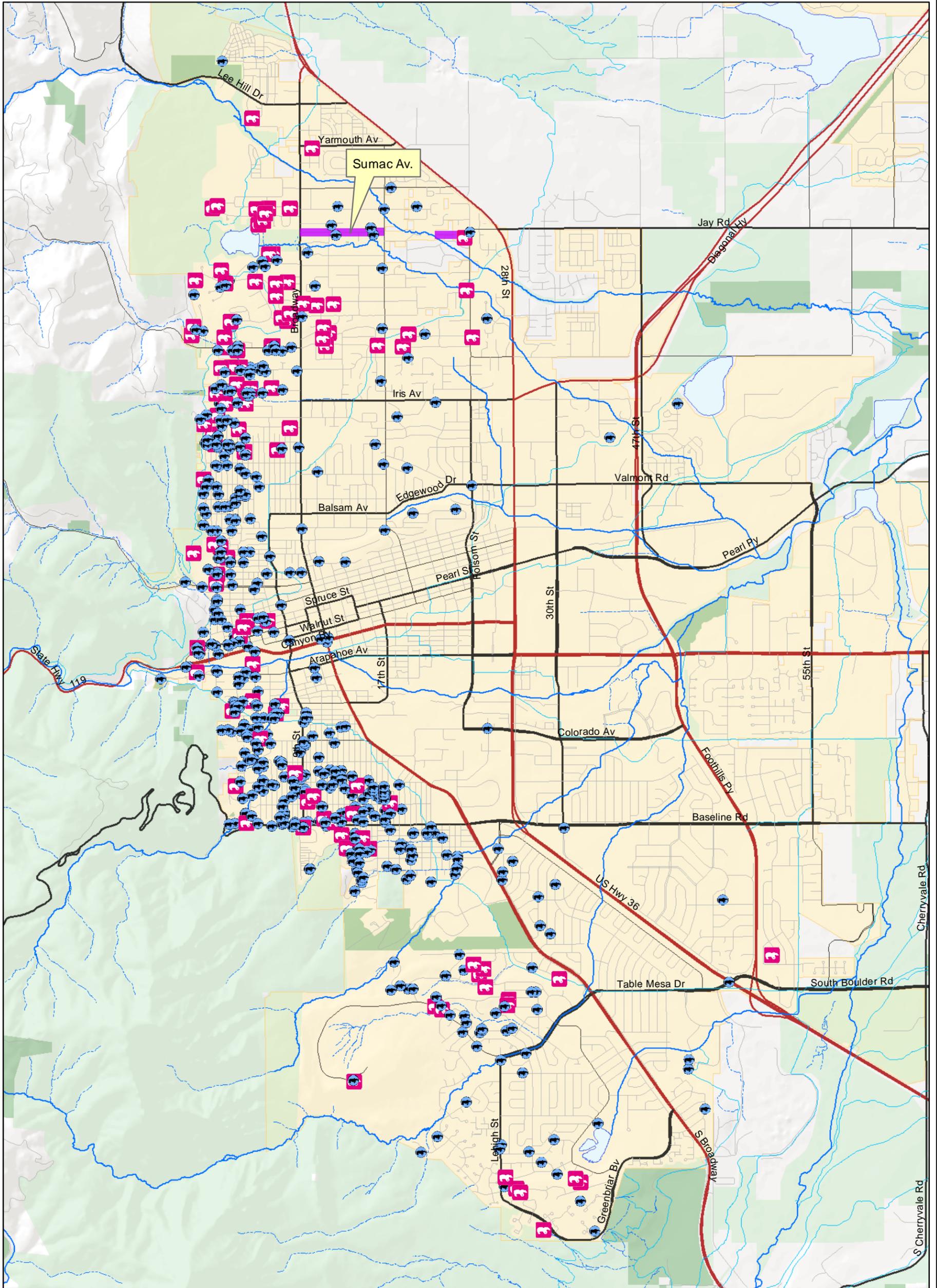
First Trash Implementation Zone (Green)

Implementation of the new storage requirements will begin in summer 2014.

The fine for a first offenses is \$250. Code enforcement officers may issue tickets in-person or give property owners citations via email, mail, or printed notification.

Reported Bear Sightings 2009 - 2014

Within City of Boulder Limits



Bear Sightings	Major Lakes	Highway	Creek
Year	City Limits	Local Street	Creek, Intermittent
2014	Open Space and Mountain Parks Property	Major Road	Ditch
2009-2013	Conservation Easement	Minor Road	
Sumac Avenue	Fee Property		
	Miscellaneous Easement		

Compliance Monitoring Report 2014 – Bears and Garbage in Boulder

Kristin Cannon and Kris Middledorf, Colorado Parks and Wildlife

Introduction

From 2012-2013 the City of Boulder partnered with Colorado Parks and Wildlife (CPW) on the Bear Education and Enforcement Pilot project (BEEP). The goal of the project was to answer:

Is education coupled with enforcement of existing trash ordinance an effective strategy to improve the way trash is stored, making it less accessible to bears?

In the spring of 2012 a group of volunteers was trained and asked to attempt to contact every resident within a distinct geographical area of the city (the Pilot Area, see Figure 1) and provide them with education on how to prevent access to garbage by bears. Additionally, multiple educational events and meetings were offered, mailings were sent out to residents, and the media was utilized to educate residents within the Pilot Area on the importance of securing trash from bears.

In the summer and fall of 2012 and 2013 CPW officers monitored the Pilot Area for trash ordinance violations and reported any violations to city Code Enforcement (CE) who followed up with warnings and summonses to residents.

The results of the BEEP were captured in a summary report prepared in early 2014. Important conclusions included the finding that education alone was not effective in preventing access to garbage by bears but that education coupled with law enforcement had a greater impact. It also identified challenges for code enforcement and the need to increase law enforcement capabilities. Finally, the report concluded that the existing trash regulations did not adequately address the availability of trash to bears. Much of that stemmed from the reactive nature of the existing ordinances and the need to have regulations that were more proactive.

In March 2014 Boulder City Council adopted city ordinance #7962 to proactively address the problem of garbage availability to bears. The new ordinance requires all garbage and compost to be secured from bears in a bear resistant containers or acceptable enclosures at all times. This went into effect, and was enforced, for residences with alley trash pickup starting on October 1, 2014. The ordinance is expected to be fully implemented in 2015.

In order to examine if this new regulation had an impact and addressed the issues identified by the BEEP CPW officers continued monitoring the Pilot Area in the fall of 2014 in the same manner as during the BEEP. The goal of the new monitoring efforts was to answer:

Does the new city ordinance help limit the availability of trash and compost to bears and how does the new ordinance affect compliance?

This report aims to summarize data collected during the 2014 monitoring effort and compare it to the extent possible to data from 2012 and 2013.

Methods

The Pilot Area boundary is 9th street on the east, Baseline on the south, Boulder city limits on the west, and Pleasant Street on the north (Figure 1). Within the Pilot Area some residents store their garbage and compost in alleys where it is collected while other residents place their containers curbside for collection and are otherwise required to store their garbage on their property and off the street.

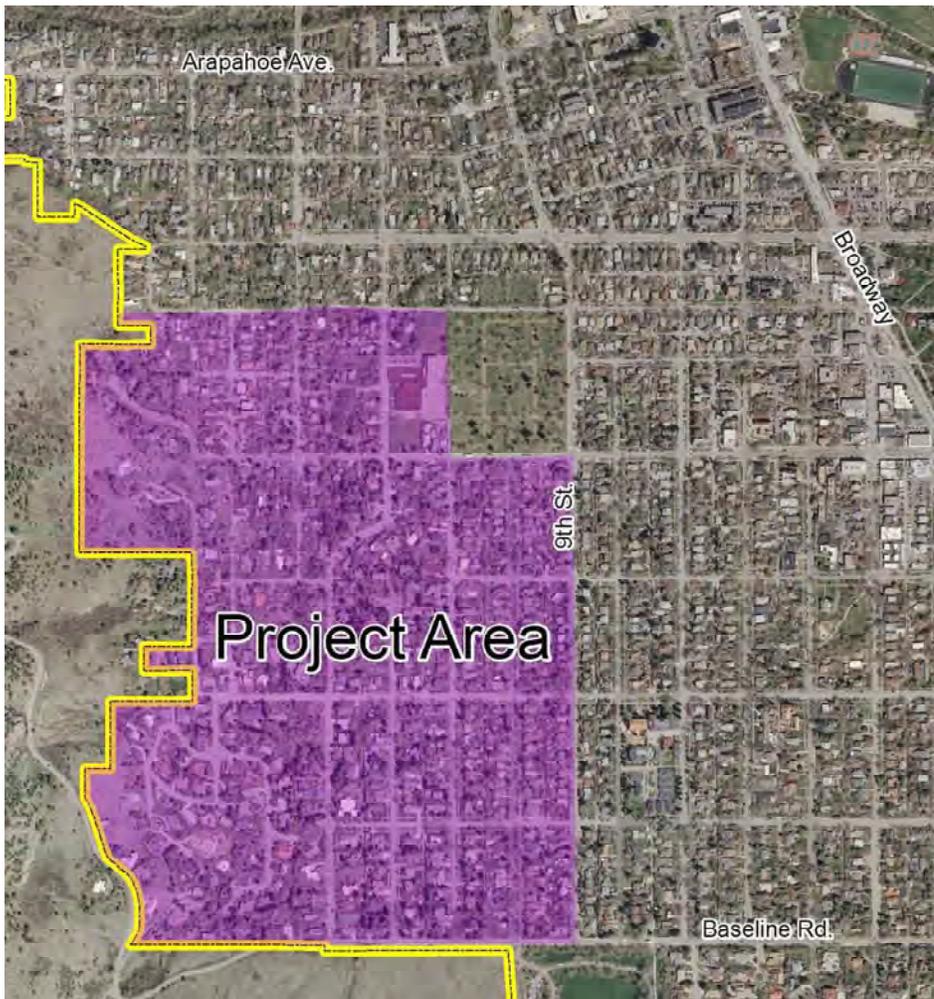


Figure 1. A map of the Project (Pilot) Area highlighted in purple with city limits delineated with yellow line.

The BEEP included targeted education to residents of the Pilot Area in 2012. In 2014 there were city wide education efforts to notify residents of the new ordinance but no education programs specific to the Pilot Area.

To monitor compliance CPW officers drove throughout the Pilot Area once a week on the night before the scheduled pick up by Western Disposal, the most common waste service company. For a majority of the Pilot Area scheduled pick up was on Thursdays therefore monitoring occurred each Wednesday night. The week of Labor Day garbage collection occurred on Friday and therefore monitoring took place on Thursday night.

Violations were associated with the address on the garbage container. If no address was visible on the garbage or compost containers the address was identified using numbers on the house behind the containers. Violations were counted by address and not container so one address with both trash and compost containers in violation was counted as one violation.

The following actions were noted as violations of Boulder city ordinance 6-3-5 *Storage, Disposal, and Screening of Trash, Recyclables, Compostables, and Specified Other Materials* (existing ordinance):

- Garbage and/or compost put out on or in front of the street curb prior to 5am the morning of scheduled pickup.
- Garbage and/or compost stored in alleys that had been knocked over and/or scattered by wildlife.
- Garbage and/or compost in alleys that were overfilled or not in a container.

After October 1st, when requirements of the new city ordinance went into effect for alleys, the following observations were noted as violations of city ordinance 6-3-12 (ordinance #7962, adopted March 18, 2014):

- Garbage and/or compost stored in alleys in non-bear resistant containers.
- Garbage and/or compost stored in alleys in non-functioning bear resistant containers or bear resistant containers that were not closed properly.

In addition to violations the following observations were noted:

- Curbside trash and/or compost containers that were non-bear resistant.
- Curbside trash and/or compost containers that were bear resistant but were not closed properly.
- Curbside trash and/or compost containers that were bear resistant but overfilled.
- Non-bear resistant containers in alleys before October 1st.

These observations were not violations of existing ordinances but were notable as they eventually were or will be violations once the new ordinance is fully enforced.

Law enforcement was not emphasized during the 2014 monitoring as it was during the BEEP but information on violations was still forwarded to CE officers for follow up.

Data collected was then analyzed and compared to data collected in 2012 and 2013. It was difficult to compare data sets directly. In 2013 a major flood event significantly interrupted monitoring and only eight weeks of data was collected. With that in mind data was compared on a limited basis.

Results

In 2014 208 violations were noted over 11 weeks from August 20th to October 29th (see Figure 2). The number of violations each week was as low as 10, observed on October 29th, and as high as 47 on September 4th when collection occurred one day later than usual as a result of the Labor Day holiday. Violations were attributed to 106 different addresses with 48 addresses in violation two or more weeks. This accounts for 20% of the Pilot Area (535 total residences) compared to 11% of households in violation in 2013 and 14% in 2012.

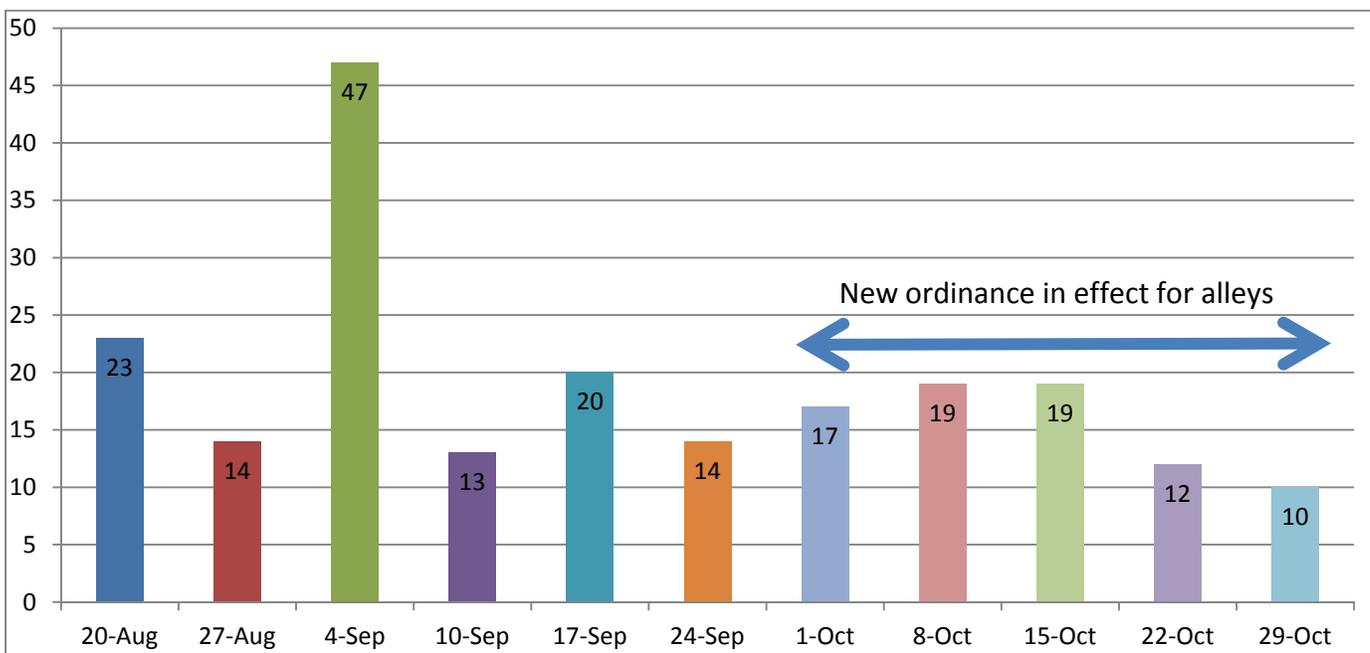


Figure 2. Number of violations observed during weekly officer patrols in 2014.

A majority of violations were a result of residents placing garbage and/or compost on or in front of the street curb prior to 5am of the morning of scheduled pickup (Figure 3). Of those violations a majority were bear resistant containers (184) but 13 violations were with non bear resistant containers. Additionally, of the 184 violations that involved bear resistant containers placed curbside 12 were overfilled and two were not closed properly. One recycling cart was spilled this year with the same address' bear resistant trash cart knocked over but not opened (Figure 4).

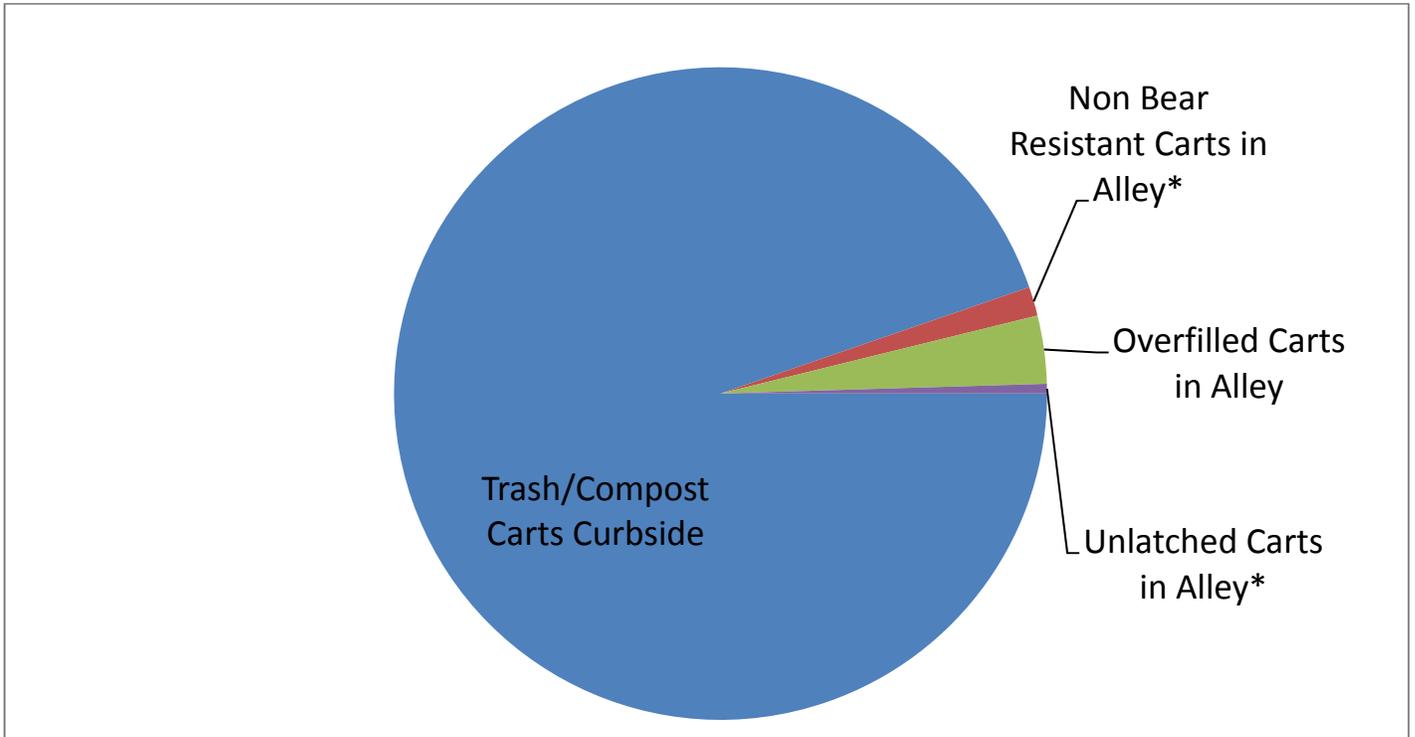


Figure 3. Types of violations observed during monitoring period in 2014. *After October 1st.

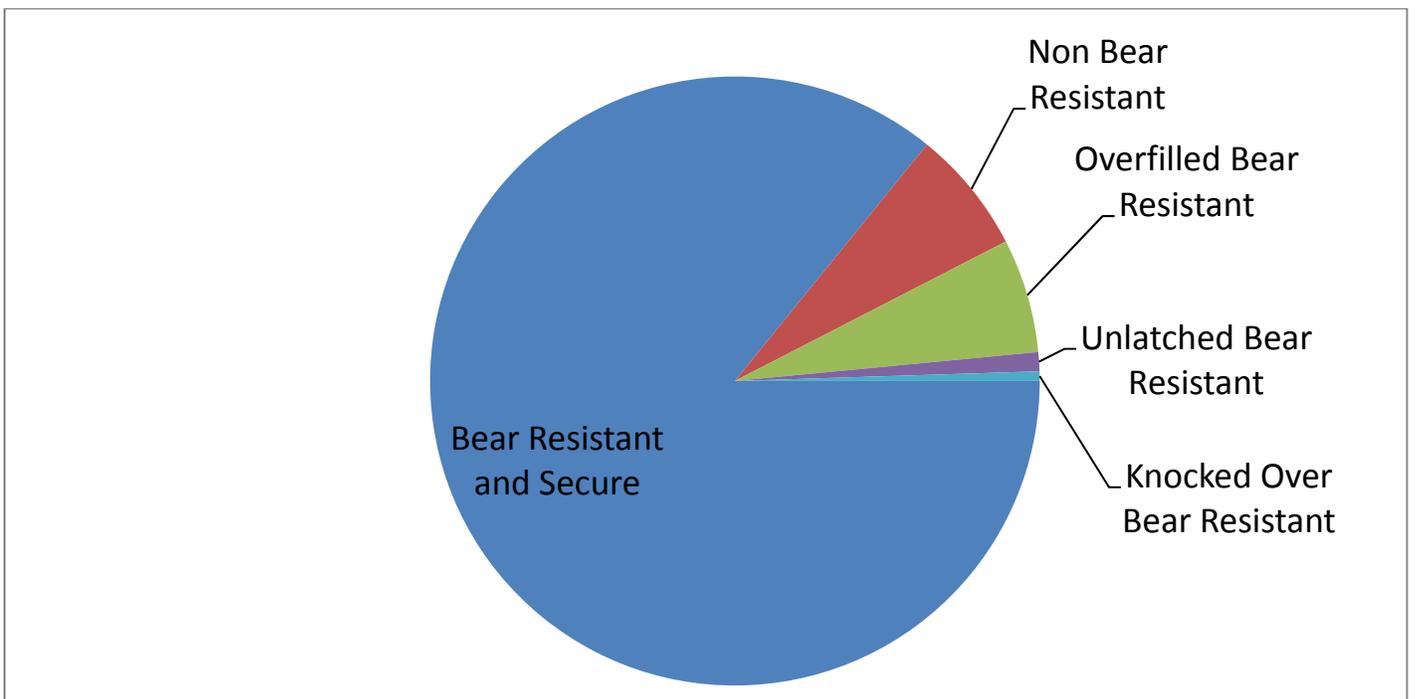


Figure 4. Status of curbside trash and/or compost containers in violation.

In order to compare observations to 2012 and 2013 similar dates were assigned week numbers. The earliest date data was collected was July 31, 2013 which was considered Week #1. The latest date in the year data was collected was October 31, 2012 which was considered Week #14. Each week shows data for the corresponding week for each year (2012, 2013, and 2014) with the dates differing by one or two days for each numbered week (see Figure 5). There were more violations in 2014 both week to week and overall. The total number of violations in 2014 was 208 violations detected over 11 weeks compared to 65 violations over eight weeks in 2013 and 122 violations over 12 weeks in 2012.

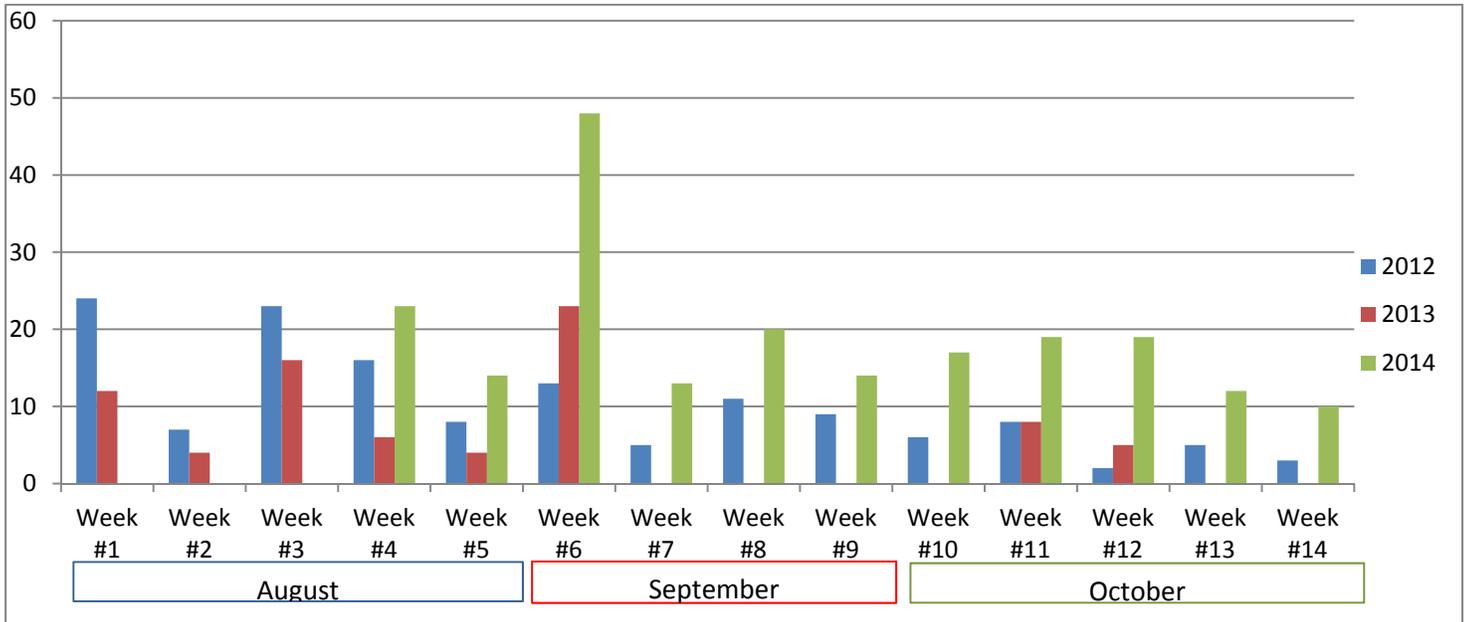


Figure 5. Number of violations observed 2012-2014

No bear resistant container was observed as having its contents scattered by bears or other wildlife. Removing the number of properly secured bear resistant containers from the data illustrates the number of violations 2012-2014 that either resulted in garbage being accessed by bears or were more likely to result in garbage or compost being accessed by bears because they were non-bear resistant or unsecured (Figure 6).

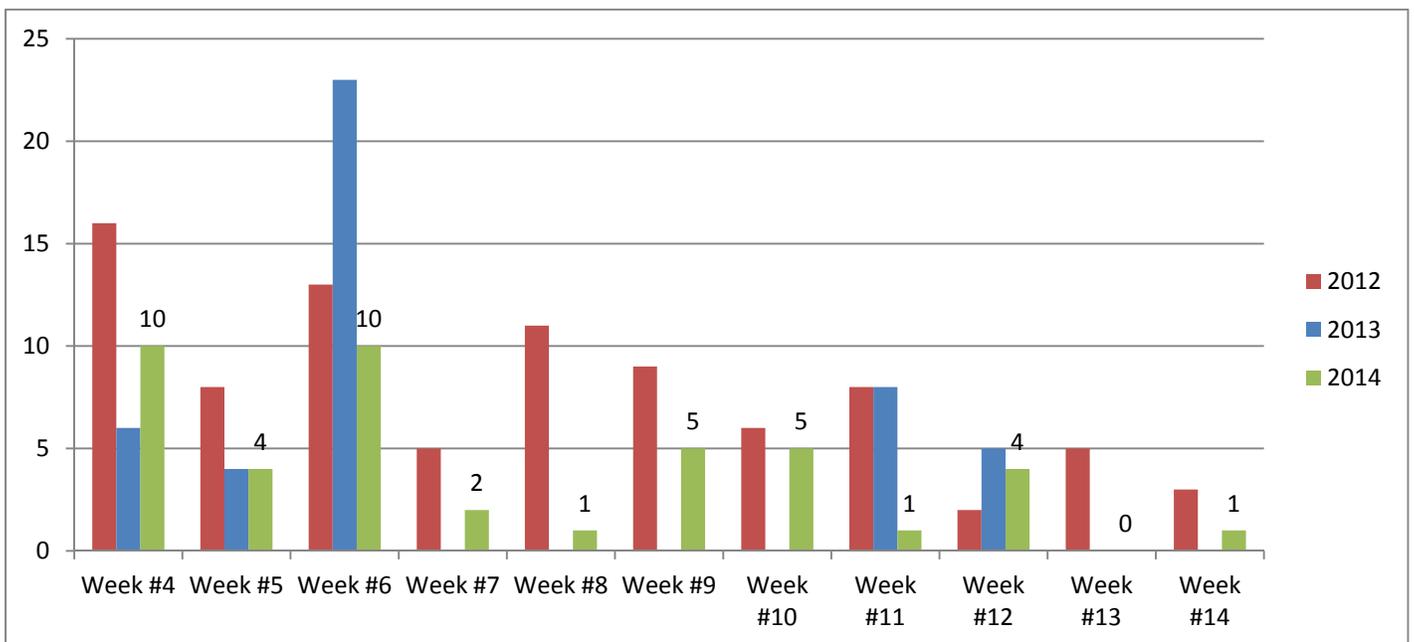


Figure 6. Total violations excluding functioning bear resistant containers 2012-2014.

Contacts made by Code Enforcement declined in 2014 from previous years in the Pilot Area. In 2014 Boulder Code Enforcement gave 22 warnings and no summonses compared to 62 warnings and 16 summonses in 2012 and 83 warnings and 3 summonses in 2013.

No bears were observed foraging on garbage or compost in the Pilot Area in 2014 unlike in 2012 and 2013 when bears were observed one or more nights during the monitoring period.

Discussion

While overall the number of violations and number of households in violation increased in 2014 the number of violations that involved unsecured garbage were lower. One hypothesis for the overall increase in violations is that because they now had a bear resistant container residents felt they could place the bear resistant containers curbside the night before and were unaware that with the change in ordinance this remained a violation. The increase in violations could also be a result of the absence of targeted education and enforcement. The BEEP identified public meetings as being ineffective and door to door education as inefficient but some level of education may prevent violations. From a wildlife manager's perspective reducing the number of bear resistant containers placed curbside may not be a priority if the bear resistant containers are successful at containing garbage. Law enforcement efforts may be better directed towards unsecured garbage and compost.

There was not as notable of a decrease in violations over the monitoring period as a whole in 2014 as observed in previous years although there were more violations in the first half of monitoring efforts vs. the second half (131 violations 08/20/14-09/24/14 vs. 91 violations 09/24/14-10/29/14).

There was a decrease in contacts made by CE in the Pilot Area in response to monitoring. As a part of the BEEP CE made responding to observed violations within the Pilot Area a priority over other parts of the city in 2012 and 2013. In 2014 the Pilot Area had equal priority for CE as other areas of the city which could explain the decrease in contacts.

By the time the monitoring started most alley garbage and compost containers had been retrofitted to be bear resistant. This could be why as of October 1st, when the new ordinance went in effect for the alleys, there was not a significant increase in violations as might be expected. It could also be why no alley garbage or compost was observed as dumped by bears or other wildlife during the monitoring period. Having non bear resistant alley garbage and/or compost was not a common violation in 2014 and a majority of residents were in compliance with the new regulations.

The waste service providers Western Disposal Services and Republic Services retrofitting garbage and compost containers and switching them out for their customers en masse and automatically likely was a large reason why compliance was essentially achieved in the alleys with little to no law enforcement. How these companies and their customers respond to broken containers will be key in maintaining long term compliance. City wide there are other garbage companies such as One Way, Inc. which left the responsibility of switching garbage and compost containers to their customers (although they provided resources such as offering to sell them appropriate containers, or remove garbage from a secure enclosure). It would be worthwhile to track how customers that did not automatically receive bear resistant containers complied with the new ordinance and if they were more likely to be in violation until contacted by law enforcement.

In May 2014 one bear was euthanized approximately 2 miles south of the study area after displaying signs of severe illness. A necropsy was performed on this bear and it was found to have high levels of the chemicals found in anti-freeze in its tissue. Also in May one juvenile bear was relocated from the same area and later destroyed in Fort Collins by CPW for human-conflict reasons. Besides these bears there were at least 12

distinct bears observed in the city in 2014. Three of those bears were reported in the study area (a sow and two cubs) but were not reported as accessing garbage and no garbage was observed as being disturbed even on nights when bears were known to have been in the area during the day. So while there were still bears foraging in the city it appears that in the study area they were not accessing garbage which could be a result of the widespread use within the study area of bear resistant containers.

Conclusion

There were a higher number of violations in 2014 than in previous years in the Pilot Area but significantly fewer instances of unsecured garbage or compost. Officers observed only one overturned container and no strewn trash whereas in previous years that was a common violation. Another notable difference is that no bears were observed foraging on garbage or compost in the study area in 2014 unlike both 2012 and 2013 where they were observed on multiple occasions. It will likely require monitoring over subsequent years to adequately investigate the impact of the new city ordinance as well as identify what issues may result and how education and law enforcement might address these to maximize success in decreasing human-bear conflict in the future.



**INFORMATION PACKET
MEMORANDUM**

To: Members of City Council

From: Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning and Sustainability
Susan Richstone, Deputy Director of Community Planning and Sustainability
Chris Meschuk, Flood Recovery Coordinator for Community Services
Bev Johnson, Annexation Project Manager

Date: February 3, 2015

Subject: Information Item: Update on Annexation of Flood Impacted Properties

Purpose

The purpose of this memo is to provide City Council with an update on the Annexation of Flood Impacted Properties. Through the special incentive package developed to assist properties impacted by the 2013 flood, the city has processed two sets of group annexations, and there is one more currently moving forward.

The first group annexation included two properties which were annexed by emergency ordinance on August 5, 2014. The second group annexation included five properties approved by City Council on January 20, 2015.

The third is a group annexation for properties along Old Tale Rd, which includes construction of a water main funded through a \$1,000,000 grant from the Colorado Department of Public Health and Environment (CDPHE). This annexation is in progress, and is scheduled for a public hearing before the Planning Board on February 19, and City Council on March 17 (1st Reading, no public hearing) and April 21 (2nd Reading & Public Hearing).

Staff is not currently working on any additional flood related annexations. However, as additional grant funding may become available, there is the potential for additional annexations. The areas for potential consideration are north Boulder enclaves and east Boulder near Cherryvale & Baseline.

There is also one non-flood related annexation proceeding at 96 Arapahoe Ave. This property has development potential. As is typical with most annexations with development potential

(other than simple one/two lot subdivisions), the annexation is processed concurrent with a concept plan review. With the new council call-up option for concept plans, there is a tool available to give council the opportunity to review annexations with development potential prior to the final annexation public hearing.

Old Tale Road Annexation

In August 2014, the city received a grant from the Colorado Department of Public Health and Environment (CDPHE) for \$1,000,000 to construct water and sewer infrastructure in one of these neighborhoods. The grant funds were authorized by the state legislature (House Bill 1002) to assist communities in recovering from the September 2013 flood. The city must obligate this money by June 2015, and expend all funds by June 2016.

Property owners in the three neighborhoods lacking adequate infrastructure were sent letters informing them of the grant award and the potential cost savings for annexation. The letter to homeowners included a survey to determine how many property owners would be interested in annexing if the cost is reduced due to the new grant funding. In addition to the reduction in cost of the utility main infrastructure, the city is offering these neighborhoods further support by waiving the annexation administration fee and offering to finance all of the costs related to water and wastewater utility connection as in the original offer. The Old Tale Rd neighborhood was the neighborhood with the most interest, and was therefore awarded the grant funds.

The Old Tale Rd neighborhood has a land use designation of Very Low Density Residential. The proposed corresponding zoning based on the future land use map is Rural Residential 1 (RR-1). This zoning designation is consistent with the surrounding properties as well. None of the properties annexing have development potential based on the proposed zoning. A map of the Old Tale area land use and zoning are on the following pages.

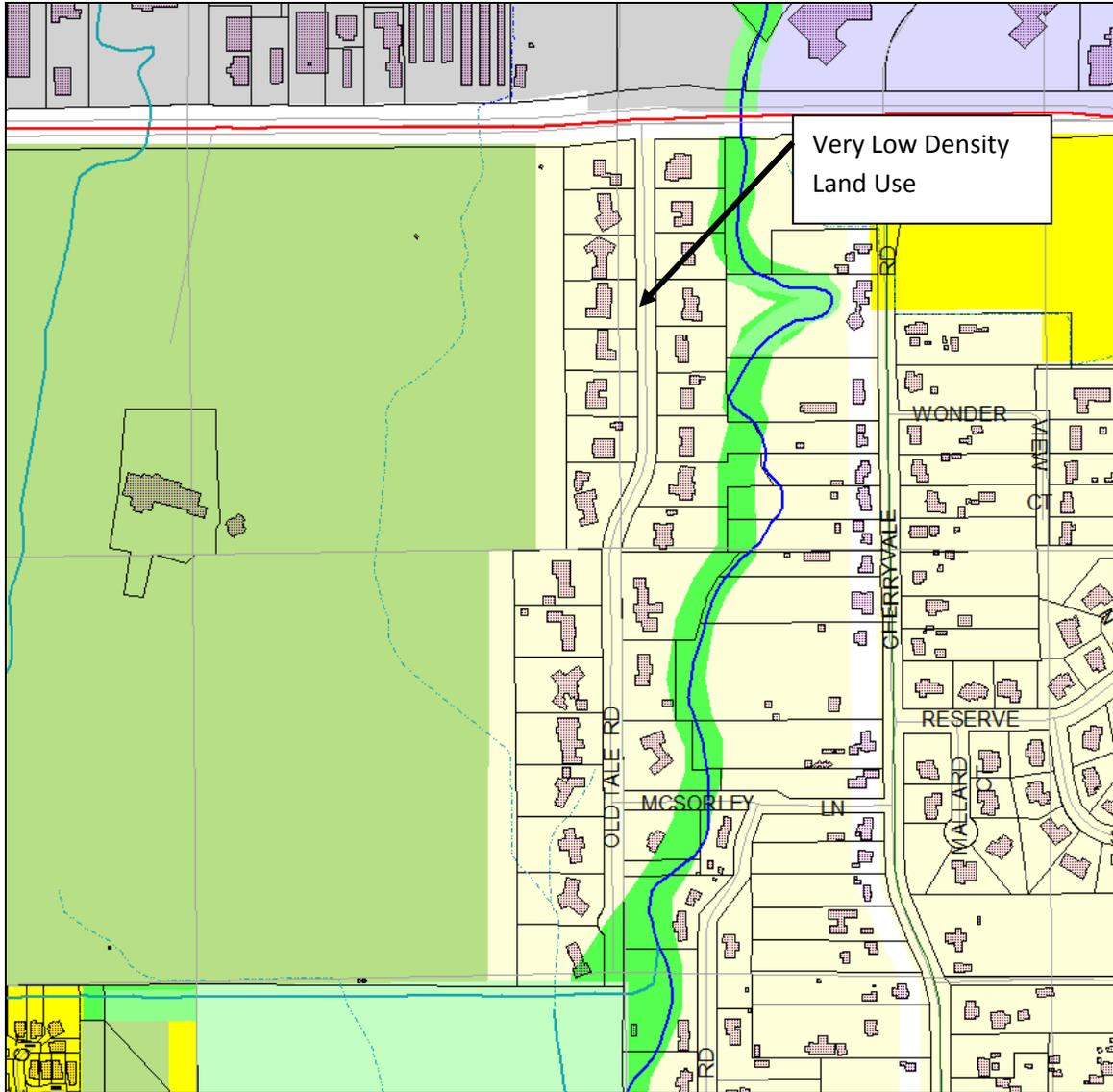


Figure 1 – Old Tale Rd Land Use

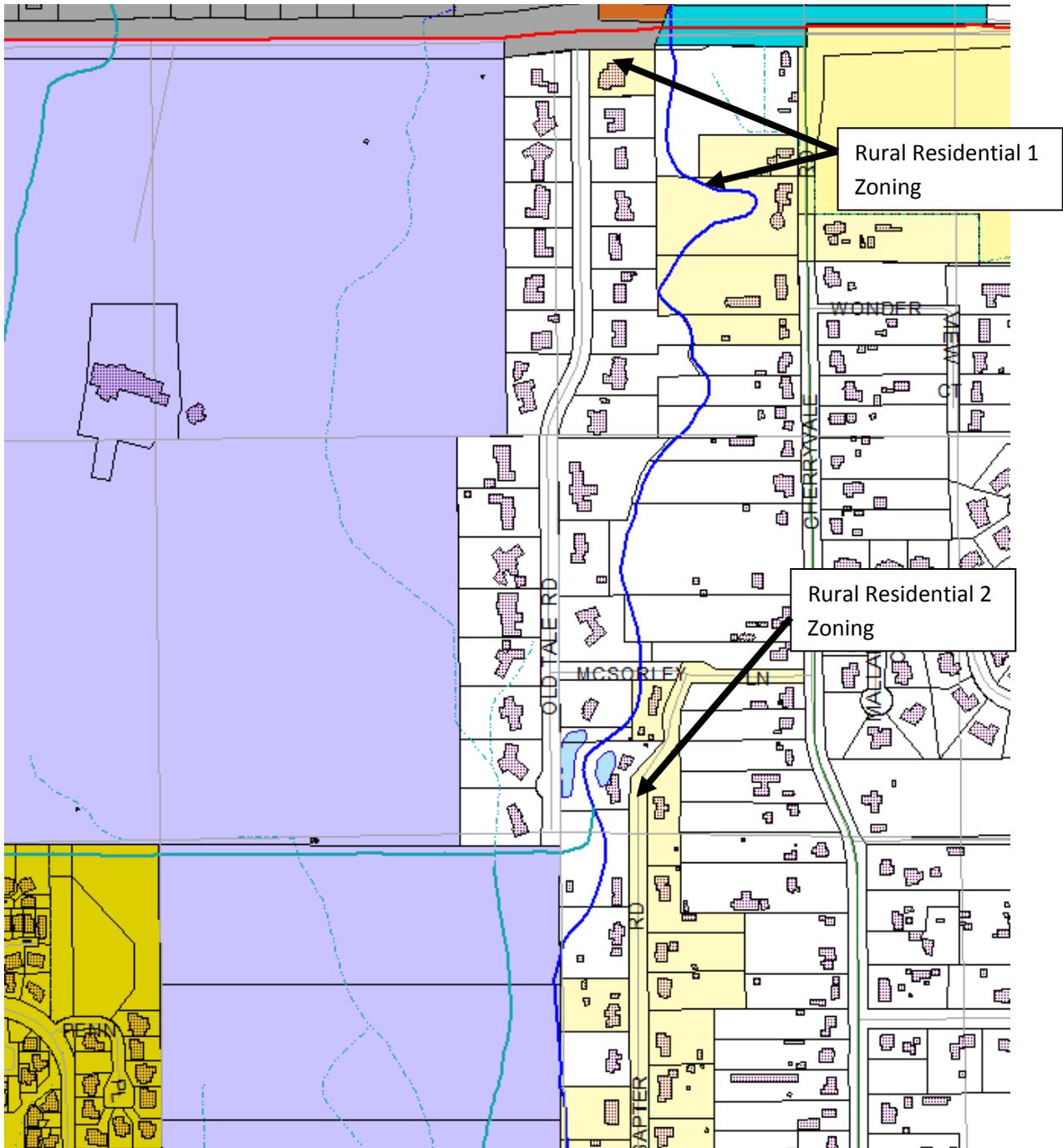


Figure 2 – Old Tale Rd Surrounding Zoning

Background

After the September 2013 flood, the City of Boulder was contacted by a number of Area II property owners outside the city limits with concerns about their wells and on-site wastewater systems (OWS) and interest in connecting to the city water and wastewater systems. As part of the December 3, 2013 City Council briefing on the flood, staff presented options for helping impacted residents by facilitating annexation and connection to city utilities. City Council members expressed support for helping flood-impacted property owners by creating incentives for annexation and also indicated that landowners should pay their share of costs and did not want annexation expenses to result in deferment of other needed city projects. The detailed package of incentives was presented through an information packet to Council in March 2014 prior to property owner outreach and was based on current Council approved annexation guidelines, and the -annexation package provided to the Gapter Road neighborhood in 2010.. Except for the fee and tax waivers, the package is consistent with the city's *Guidelines for Annexation of Substantially Developed Residential Properties* (2000), which has been the guiding policy document for single family residential annexations since 2000. The package includes the following:

1. The city will waive the annexation application and public hearing fees totaling \$6,580 for individual applications. (same as Gapter Road)
2. The city will waive all Development Excise Taxes (cost varies depending on age of home, can be up to \$3,286 for a new home) and Housing Excise Taxes (\$0.23 per house square foot). (same as Gapter Road)
3. The city will offer a 10-year financing plan for all water, wastewater and stormwater PIFs. (Financing of PIFs is a new offer.)
4. Property owners along creeks will be required to dedicate a flood maintenance easement of 60 feet along either side of the centerline of a major drainageway. (same as Gapter Road)
5. Property owners will be required to connect to water and wastewater systems within a few months of annexation or completion of any necessary public improvements and begin reimbursement to the city of their individual share of the costs of those public improvements as well as permit fees, tap fees, inspection fees and PIFs. (same as Gapter)
6. Community benefit requirements would be applied to properties with additional development potential, which includes the ability to subdivide the property and/or build at least one additional unit on the property. A community benefit requirement in the form of two times the cash in-lieu contribution as set forth in the inclusionary housing ordinance to the Affordable Housing Fund would be required at the time of subdivision building permit for the additional unit. (This requirement is consistent with the city's annexation guidelines.)

In Spring 2014, staff moved forward with the project by making an offer to approximately 160 property owners in Area II enclaves and neighborhoods adjacent to the city. The city also stipulated that it will not enter into individual negotiations with landowners under this offer due to the added staff resources involved in individual negotiations. If a property owner wishes to negotiate items not outlined in the standard package, they would pay all standard annexation fees and go through the regular annexation application review process without the ability to finance utility connection costs through the city. For example, any requests for change to the community

benefit requirement outlined above would need to be reviewed through the regular development review process. Property owners interested in subdividing their property concurrent with annexation would also need to go through the regular review process and pay the full set of fees.

Staff initially received requests for more information about the specific costs of annexation from 35 property owners in May and June 2014.



INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane Brautigam, City Manager
Maureen Rait, Executive Director of Public Works
Mike Sweeney, Acting Director of Public Works for Transportation
Joe Paulson, Transportation Engineer: Signals & Lighting

Date: February 3 2015

Subject: Information Item Broadway and Yarmouth Intersection Safety Concerns

EXECUTIVE SUMMARY

In recent weeks, members of the community have expressed concern about the safety and operation of the Broadway and Yarmouth Avenue intersection in north Boulder. The location currently has a marked and signed “state law – yield to pedestrians” crossing, to facilitate pedestrian movement; vehicular traffic on westbound Yarmouth has a stop sign at Broadway.

The Transportation Division evaluates the installation of potential traffic control devices based on federal standards. Traffic signal installations have inherent safety tradeoffs and careful consideration is taken in evaluating locations to determine that net safety will be improved. To date, observed conditions at the intersection do not warrant installation of a traffic signal. Staff will continue to monitor conditions and a follow up traffic warrant study is scheduled for the first quarter of 2015. Staff will report back to Council on the outcome of that study by May 1, 2015

In addition, as part of the Transportation Improvement Program (TIP) process administered by the Denver Regional Council of Governments (DRCOG) that allocates federal funding for transportation improvements, the city recently learned the submittal to reconstruct and re-imagine Broadway from Lee Hill Road to Violet Avenue has been approved. This stretch includes the Broadway and Yarmouth intersection. Information regarding the specific funding timeline has not yet been released, but staff anticipates design funding should become available in 2016, with construction funding becoming available in subsequent years. This corridor project represents an ideal context to evaluate the effectiveness of the current configuration and

operation of the Broadway and Yarmouth intersection, gain community input on potential changes, and implement any appropriate improvements within the corridor reconstruction.

BACKGROUND

Members of the north Boulder community have recently expressed concern about the safety and operational effectiveness of the Broadway and Yarmouth Avenue intersection. A primary concern expressed is the safety of pedestrians crossing Broadway at Yarmouth, including people whose destination is the new North Boulder Library Annex on the northeast corner of the intersection. In addition, there is concern about the vehicular movements from westbound Yarmouth turning left onto southbound Broadway, including delays due to conflicting traffic. There are also concerns related to available sight distance to view northbound traffic (including cyclists in the bike lane) due to the on-street parking on the southeast corner of the intersection.

In 2003, staff evaluated the need for a pedestrian crossing treatment on Broadway at the Yarmouth intersection. Using the City of Boulder Pedestrian Crossing Treatment Installation Guidelines, the city found that it met the criteria for a signed and marked crossing treatment, which was installed.

In 2011, pedestrian crossing signs throughout Boulder (including at Broadway and Yarmouth) were changed to the current “State Law” version. This change was made after a study initiated by staff found that the new sign designs resulted in better driver compliance to yield to pedestrians than the traditional signing. A subsequent evaluation of the Broadway and Yarmouth crossing performed by an engineering consultant at the request of staff found that driver compliance at that location remained relatively low. In February 2014, additional “State Law” crosswalk signs were installed on the backside of the existing signs, providing “gate-posted” signing on both sides of the street in an effort to increase driver compliance. Staff is currently studying compliance and safety at the upgraded crossing, and should have any resulting recommendations for improvements in the first quarter of 2015.

The Broadway and Yarmouth intersection has been identified as a potential location for a traffic signal, due to the combination of vehicular and pedestrian activity at that location. Since 2002, staff has periodically performed intersection studies to evaluate if a traffic signal would be beneficial. These studies involve analysis of the current conditions at the intersection using criteria determined by the Federal Highway Administration of the U.S. Department of Transportation. The analyses examine accident history, traffic volume and delay data to assess the safety and efficiency of the current intersection operations to determine if a traffic signal would make it safer or more efficient.

ANALYSIS

To date, signal warrant studies performed at the Broadway and Yarmouth intersection including one completed in 2014, have concluded that the installation of a traffic signal would not provide safety or efficiency benefits.

Accident data at the Broadway and Yarmouth intersection shows that it has not experienced sufficient numbers of preventable incidents to offset the likely increase in rear-end accidents. This data is not consistent with the federal criterion that warrants the installation of signals, which is 'sufficient history of reported "correctable" incidents.' Based on the current accident analysis, it is not probable that signalization would increase the safety of the intersection.

As on-going change continues to occur in north Boulder, including the construction of additional housing and the opening of the North Boulder Library Annex in 2014, staff will perform an additional warrant study in the first quarter of 2015.

There has also been concern expressed about the available sight distance for drivers on westbound Yarmouth making southbound (left) turning movements onto Broadway. As is the case at many locations in Boulder and elsewhere, objects (including parked cars) limit the ability to see approaching traffic when stopped at the stop bar. However, after stopping and yielding to any traffic in the crosswalk, drivers can move forward to increase their sight distance in order to determine if it is safe to proceed. Accident data shows that there has been an average of less than one incident per year over the last seven years including vehicles turning onto Broadway. Due to limited incidents, the city is not recommending the removal of parking spaces on the east side of Broadway south of Yarmouth.

NEXT STEPS

As part of the TIP process, administered by DRCOG, that allocates federal funding for transportation improvements, the city recently learned the submittal to reconstruct and re-imagine Broadway from Lee Hill Road to Violet Avenue has been approved. This stretch includes the Broadway and Yarmouth intersection. Information regarding the specific funding timeline has not yet been released, but staff anticipates design funding should become available in 2016, with construction funding becoming available in subsequent years.

This corridor project represents an ideal context to evaluate the effectiveness of the current configuration and operation of the Broadway and Yarmouth intersection, gain community input on potential changes, and implement any appropriate improvements within the corridor reconstruction.

Staff will continue to monitor the location and a follow up traffic signal warrant study will be performed in the first quarter of 2015. Staff will report on the outcome of that study by May 1, 2015.

City of Boulder
BOARDS AND COMMISSIONS MEETING SUMMARY FORM

NAME OF BOARD/COMMISSION: Human Relations Commission
DATE OF MEETING: Jan. 26, 2015
NAME/TELEPHONE OF PERSON PREPARING SUMMARY: Robin Pennington 303-441-1912
NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT: Commissioners – Amy Zuckerman, Shirly White, Emilia Pollauf, Nikhil Mankekar, José Beteta Staff – Carmen Atilano, Robin Pennington, Karen Rahn Commissioners absent - None
WHAT TYPE OF MEETING (CIRCLE ONE) [REGULAR] [SPECIAL] [QUASI-JUDICIAL]
AGENDA ITEM 1 - CALL TO ORDER – The Jan. 26, 2015 HRC meeting was called to order at 6 p.m. by A. Zuckerman .
AGENDA ITEM 2 – AGENDA ADJUSTMENTS – S. White moved to add Boulder County Circles Poverty Simulation as an Immediate Action Item VII.A. as action is required before the next HRC meeting occurs on Feb. 23. E. Pollauf seconded. Motion carries 5-0.
AGENDA ITEM 3 – APPROVAL OF MINUTES – E. Pollauf moved to approve the Dec. 15, 2014 minutes. N. Mankekar seconded. Motion carries 5-0.
AGENDA ITEM 4 – COMMUNITY PARTICIPATION (non-agenda action items) – Isolde Stewart, Ray Stewart, Janet Heimer, Leonard Weed and Audrey Franklin spoke about the 2015 Martin Luther King (MLK) Day events and how this year differentiated from the celebrations held in Boulder in past years.
AGENDA ITEM 5 – ACTION ITEMS A. 2014 Community Impact Fund Reports 1. Community Cycles – Jennifer Shriver reported on the “Building an Inclusive Biking Community” project. E. Pollauf moved to approve pending receipt of the final budget report in the spring of 2015. N. Mankekar seconded. Motion carries 5-0. B. 2014 Community Event Fund Reports 1. Bridge House 2014 Homeless Persons’ Memorial – Emily Messina-Heim reported on the Homeless Persons’ Memorial held on Dec. 20, 2014. E. Pollauf moved to approve pending receipt of the final budget report. N. Mankekar seconded. Motion carries 5-0.
AGENDA ITEM 6 – DISCUSSION/INFORMATIONAL ITEMS A. 2015 HRC Work Plan – Commissioners discussed the 2015 HRC Work Plan, priorities for 2015 and how to better align grant funding to HRC goals. Further discussion will take place at the February HRC meeting. B. Event Reports – A brief discussion of the Boulder MLK Day events was held. A. Zuckerman and N. Mankekar attended the film screening and panel discussion on Jan. 19, 2015. A. Zuckerman, S. White, E. Pollauf and N. Mankekar attended the Informational Gathering: Executive Action on Immigration on Jan. 15, 2015. S. White and N. Mankekar attended the City Council Study Session on Jan. 13, 2015. C. Follow Up Tasks – Submit the Dec. 15, 2014 minutes, place MLK Day on the Feb. 23 agenda, provide the Community Cycles CIF final report to the HRC upon receipt, draft an update to the HRC 2015 Work Plan, provide notification to the community that CIF applications are on hold pending Work Plan updates, provide city MLK funding history and peer city funding information to the HRC, and notify Boulder County Circles of HRC sponsorship of the next Poverty Simulation.

AGENDA ITEM 7 – IMMEDIATE ACTION ITEMS

A. Boulder County Circles Poverty Simulation – **J. Beteta moved** that the HRC co-sponsor the next Boulder County Circles Poverty Simulation to be held in Boulder. **N. Mankekar seconded. Motion carries 5-0.**

AGENDA ITEM 8 – Adjournment – J. Beteta moved to adjourn the Jan. 26, 2015 meeting. **S. White seconded** the motion. **Motion carries 5-0.** The meeting was adjourned at 8:27 p.m.

TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS: The next regular meeting of the HRC will be Feb. 23, 2015 at 6 p.m. at 1777 West Conference Room, Municipal Building, 1777 Broadway St.



CITY OF BOULDER
Boards and Commissions Minutes

NAME OF COMMISSION: Open Space Board of Trustees
DATE OF MEETING: January 14, 2015
NAME/EXTENSION OF PERSON PREPARING SUMMARY: Leah Case x3440
NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT: MEMBERS: Tom Isaacson, Shelley Dunbar, Frances Hartogh, Molly Davis, Kevin Bracy Knight STAFF: Tracy Winfree, Jim Reeder, Mark Gershman, Cecil Fenio, Heather Swanson, Phil Yates, Steve Armstead, Kelly Wasserbach, Greg Seabloom, Leah Case
TYPE OF MEETING: <u>REGULAR</u> CONTINUATION SPECIAL
SUMMATION: AGENDA ITEM 1- Approval of the Minutes Kevin Bracy Knight moved the Open Space Board of Trustees to table approval of the minutes until the proper policy for the public amendment of the minutes is determined. Shelley Dunbar seconded. This motion passed unanimously. AGENDA ITEM 2- Public Participation Guy Burgess, Boulder, said many of the new trails are astonishingly flat. He would like to see trails built with a steep grade to help accomplish a workout, and for south facing trail to remain open in the winter. Several members from the public spoke regarding Joder Ranch. AGENDA ITEM 3- Director's Updates Voice & Sight Tag Program Update Steve Armstead, Environmental Planner, gave an update on the Voice and Sight Tag Program. Status report on Left Hand Trail improvements Jim Reeder, Land and Visitor Services Division Manager, gave an update on the Left Hand Trail improvements. Status report on Skunk Canyon Trail alignment Jim Reeder gave an update on Skunk Canyon and a possible trail alignment. Status report on Gregory Canyon step repair

Jim Reeder gave an update on Gregory Canyon and the proposed trail work.

FEMA Update

Mark Gershman, Environmental Planning Supervisor, gave an update on the Open Space and Mountain parks FEMA reimbursements.

Opening of US36 underpass/South Boulder Creek Trail

Mark Gershman gave an update on the underpass at US36 and potential re-opening dates for the South Boulder Creek Trail.

Update on Joder property next steps

Jim Reeder presented some updates on Joder Ranch.

AGENDA ITEM 4- Matters from the Board

Tom Isaacson moved to elect Leah Case as the Board Secretary. Shelley Dunbar seconded. This motion passed unanimously.

Tom asked if Sanitas Valley trail loop can remain open while trail work is taking place in that area. Kevin Bracy Knight asked the public to send him feedback on positive public processes they have been a part of.

AGENDA ITEM 5 – Consideration of a motion to approve the purchase of 5 acres of land and all mineral rights located at 38474 Boulder Canyon Dr. from the Bonnie L. Schnell Revocable Trust for \$400,000 for Open Space and Mountain Parks purposes and an additional \$20,000 is recommended to be authorized from the acquisition budget for deconstruction and recycling of the existing house. Consideration of a motion to recommend that this parcel be included as part of the Western Mountain Parks Habitat Conservation Area.*

Jim Schmidt, Property Agent, gave a presentation to the Board on a possible acquisition.

This item spurred two motions:

Shelley Dunbar moved the Open Space Board of Trustees approve a motion recommending that the Boulder City Council approve the purchase of this 5-acre parcel located at 38474 Boulder Canyon Dr. for \$400,000 and an additional \$20,000 be authorized from the acquisition budget for the potential deconstruction and recycling of the existing house. Molly Davis seconded. This motion passed unanimously.

Frances Hartogh moved the Open Space Board of Trustees approve a motion recommending that the Boulder City Council approve inclusion of this parcel as part of the Western Mountain Parks Habitat Conservation Area. Tom Isaacson seconded. This motion passed three to two; Kevin Bracy Knight and Shelley Dunbar dissented.

ADJOURNMENT: The meeting adjourned at 8:40 p.m.

ATTACH BRIEF DETAILS OF ANY PUBLIC COMMENTS:

Several members from the public spoke in regard to the Schnell acquisition and expressed their support for the staff recommendation.

TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:

The next OSBT meeting will be Feb. 18, 2015.

**A DECLARATION EXPRESSING APPRECIATION FOR
MARK UDALL'S MANY CONTRIBUTIONS TO
THE CITY OF BOULDER, THE STATE OF COLORADO AND THE NATION
January 20, 2015**

WHEREAS, Mark Udall represented the City of Boulder and the 14th House District in the Colorado House of Representatives from 1996 to 1998; and

WHEREAS, Mr. Udall then went on to represent the City of Boulder and the 2nd Congressional District in the U.S. House of Representatives from 1999 until 2009; and

WHEREAS, most recently, he represented the City of Boulder and the entire State of Colorado in the U.S. Senate from 2009 until 2014; and

WHEREAS, throughout his public service career, Mr. Udall represented the interests of his constituents with honor and distinction; and

WHEREAS, among Mr. Udall's many accomplishments are the following:

- **Wind Production Tax Credit** – Repeatedly fought to extend the wind production tax credit, which supports various companies and jobs in the Boulder area and helps the nation take important steps towards a new energy economy.
- **Flood Relief** – Led the effort to secure hundreds of millions in federal funding for Colorado to help rebuild roads, bridges and our communities after last fall's devastating floods.
- **Aerospace**: As the Chairman of the Strategic Forces Subcommittee, took the lead in ensuring that Colorado's aerospace industry remained at the cutting edge of space exploration and military technological advances by helping projects specific to the Boulder area, such as the Joint Polar Satellite System which improves our nation's weather forecasting system and which is being partially built in Colorado by Ball Aerospace and UCAR's COSMIC-2 satellite program.
- **Innovation Economy**: Helped secure a patent office in Denver in 2012, which will support not only hundreds of jobs in the metro area, but also serve as a major incentive for startups and other innovation-based businesses to move to Colorado.
- **Transportation/Boulder B-cycle**: Provided support which led to the Boulder B-cycle program receiving a \$440,000 federal competitive grant in 2012, allowing for an expanded B-cycle system and encouraging better, cleaner modes of transportation in and around the city.
- **Colorado Federal Labs**: Ensured continued funding for the federal labs in Colorado including NOAA, NCAR and NREL, all which support Colorado's innovation economy.
- **Rocky Flats National Wildlife Refuge**: Played an instrumental role in closing the former Rocky Flats Plant facility and, after cleanup, transforming it into a wildlife refuge.

NOW, THEREFORE, BE IT DECLARED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO that the City of Boulder expresses its sincere appreciation to Senator Mark Udall for his tireless service and the contributions he has made during his 18 years of public service.


Matthew Appelbaum, Mayor

