

**Celebration of 2C and Launch of Public WiFi in Civic Area Park
5:30-6 PM in the Municipal Lobby**

**THE CITY OF BOULDER
CITY COUNCIL MEETING
COUNCIL CHAMBERS, 1777 Broadway
April 7, 2015
6 PM**

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

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 **minutes of the December 2, 2014** City Council meeting

 - B. Consideration of a motion to approve **the minutes of the February 12, 2015** Special City Council meeting

 - C. Consideration of a motion to accept the summary of the **Feb. 24, 2015 Study Session Summary on the 2014 Transportation Master Plan Implementation** Six-month Update

 - D. Consideration of a motion to approve **Resolution No. 1158 declaring the city of Boulder's official intent to participate in a future issuance of a Stormwater and Flood management revenue bonds and to reimburse itself for capital expenditures undertaken in advance of such financing made from the Stormwater fund**, including, without limitation, architectural, engineering, appraisal, surveying, acquisition, site preparation and other costs incidental to the commencement of construction of the financed project.

 - E. **Fourth reading** and consideration of a motion to adopt **Ordinance No. 8028 amending the building height regulations** and requirements of Title 9, "Land Use Code" B.R.C. 1981 for certain areas of the city

- F. **Introduction**, first reading, and consideration of a motion to order published by title only **Ordinance No. 8040** amending Title 9, “Land Use Code,” B.R.C. 1981, to **allow medical or dental clinics or offices and addiction recovery facilities as a conditional use in the Industrial General (IG) zoning district near Boulder Community Health (BCH), Foothills Campus**
- G. **Introduction**, first reading and consideration of a motion to order published by title only **Ordinance No. 8041** to **rezone** the property located at **1900 Folsom Street, from Business Transitional – 2 to Business Regional – 1**, consistent with the Boulder Valley Comprehensive Plan land use designation of General Business
- H. **Introduction**, first reading and consideration of a motion to adopt Emergency **Ordinance No. 8042**, amending Chapter 6-4, B.R.C. 1981, to create consistency with the legislative intent in adopting Ordinance No. 8015, **related to expansion of smoke free areas**, by amending Sections 6-4-3.5, 6-4-6, and 6-4-7, and setting forth related details
- I. Consideration of a **motion to call a special city council meeting on Tuesday, April 14, following the regularly scheduled study session, to close the public hearing on 747 12th Street landmarking**

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. **Second reading** and consideration of a motion to adopt **Ordinance No. 8032 granting a 10-year franchise to Comcast of Colorado IV, LLC; approving a 10-year cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC; and authorizing the city manager to sign all agreements attendant thereto**
- B. **Second reading** and consideration of a motion to adopt and order published by title only **Ordinance No. 8038 allowing for production and sale of certain foods in residential zone districts**, amending Section 9-6-3(e) “Specific Use Standards – Residential Uses”; amending Section 9-9-21 “Signs” **and adding a new Chapter 6-17 “Cottage Foods and Fresh Produce”**

6. **MATTERS FROM CITY MANAGER**

- A. **Consideration of a motion to revise the City of Boulder’s 2015 State and Federal Legislative Agenda**
- B. **Direction on Draft Resolution No. 1159 concerning the use of neonicotinoid pesticides** in the City of Boulder, including analysis and preliminary options

- C. Consideration of a **motion to approve a work plan in support of City Council’s request for further research and information to guide future decisions in support of the city’s commitment to a safe and welcoming community**

7. MATTERS FROM CITY ATTORNEY

- A. **Request for Council direction regarding assistance to mobile home owners in Boulder**
- B. **Request for Council to schedule an Executive Session**
- C. **Consideration of a motion authorizing the city manager to enter into a settlement agreement of a claim for damages, injuries, and medical costs of Byron and Kathy West**

8. MATTERS FROM MAYOR AND MEMBERS

A. Call Ups

- 1. Potential call-up for the vacation of a utility easement at 950 Gilbert Street

B. Employee Evaluation Committee report

9. PUBLIC COMMENT ON MATTERS (15 min.)

Public comment on any motions made under Matters.

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

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

12. ADJOURNMENT

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Anyone requiring special packet preparation such as Braille, large print, or tape recorded versions may contact the City Clerk’s Office at 720- 564-2175, 8 a.m. – 5 p.m. Monday through Friday. *At least two business days notification prior to the meeting or preparation of special materials is required.*

If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three 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**

December 2, 2014

1. CALL TO ORDER AND ROLL CALL

Mayor Appelbaum called the December 2, 2014 meeting to order at 6:05 PM in Council Chambers.

Those present were: Mayor Appelbaum and Council Members Cowles, Jones, Karakehian, Morzel, Plass, Shoemaker, Weaver and Young.

A. Recognition of Open Space and Mountain Parks Director Mike Patton

City Council acknowledged and thanked Mr. Patton for his service to the City.

B. Solar Friendly Communities Designation 6:24PM

Presented by Rebecca Cantwell, Executive Director of Colorado Solar Industries Association.

C. Items Relating to the Certification of the 2014 Special Municipal Coordinated Election held on November 4, 2014

Presented by City Clerk Alisa Lewis.

The City Clerk called the Canvass and Election Board to order, called the roll and delivered the oath. By acclamation, Mayor Appelbaum was voted the chair of the Canvass Board.

The Board received: (1) certification of the official public notice and affidavit of publication (2) official ballot and (3) certificate of election results.

The City Clerk reviewed the three ballot measures, all which passed:

1. 2A – Community Culture and Safety Temporary Tax
2. 2B – Executive Session Regarding Municipalization
3. 2C - Telecommunications Service

Public Hearing – As there were no speakers, the public hearing was closed.

Council Member Morzel moved, seconded by Council Member Cowles, to approve the abstract and result sheets for the November 2014 election results. The motion passed 9:0 at 6:39 PM.

Mayor Appelbaum moved, seconded by Council Member Weaver to adjourn from the General Canvassing and Election Board for the Special Municipal Election and reconvene as City Council. The motion passed 9:0 at 6:39 PM.

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE

1. Steve Pomerance – re: executive sessions, suggested that tapes be maintained for several years not just a few months.
2. Karey Christ-Janer – spoke in favor of net metering and supported keeping recordings from executive sessions.
3. Steve Karakitsios - A Fraser Meadows resident who recently attended a National Flood Insurance meeting where he learned that a property can only have two flood claims before that property would be deem uninsurable.
4. Barry Satlow – Chair of local ACLU opposed to limited retention of executive session recordings and urged a charter change to remove the requirement for unanimous vote of council to release the recordings.
5. John Malloree - Opposed to the destruction schedule of executive session tapes and supported the charter change mentioned by Mr. Satlow.
6. Chris Woods – Marijuana business owner requesting the extension of business hours after 7 PM stating that there was a significant loss of business in the evenings.
7. Shawn Coleman – Expressed concern that the only issue being addressed by the council prior to February of 2015 was the extension of the conversion deadline. He urged council to take action on the issues relative to marijuana businesses particularly noting the disadvantage of prohibiting merchandise sales.
8. Carl Norby – representing the neighborhood of Fraser Meadows spoke to ongoing flood impact issues, particularly the lining of sewer lines that was creating a higher water table.
9. Angelique Espinoza – Asked that council clarify the timeline for marijuana issues to be addressed, noting that it was important to resolve competitive equity. She also expressed concern about an issue raised on Hotline regarding the Planning Board and stressed the importance of such a discussion and suggested it would be an appropriate topic for the Council retreat.
10. Truman Bradley – Medical marijuana business owner urged council to remove the deadline for conversions altogether. He outlined the challenges that the industry faced and suggested that the regulations could be less draconian, all would benefit.

Open Comment was closed at 7:18 PM.

Staff and Council Response to Open Comment

The City Manager had no response to Open Comment.

Council Member Shoemaker asked Senior City Attorney Kathy Haddock what the rationale is behind having a deadline for conversion of medical marijuana licenses to recreational licenses.

Ms. Haddock responded that it was standard procedure for non-conforming uses that there be a date that applies to everyone. This provides clarity for the future as to which laws applied when.

Council Member Morzel asked if discussions were continuing with the Frazer Meadows group regarding flood issues. The City Manager responded that they were continuing to meet with this group.

Council Member Cowles addressed the frustration expressed by several speakers that a year had gone by regarding the timeline for marijuana issues. He reminded people that Council had addressed some of the issues in June and that a lot of time has been spent on marijuana issues but Council had several other competing interests that must be taken care of before the end of the year.

Council Member Jones requested that a clear timeline be clarified on Item 3I – Conversion from medical to recreational marijuana - under Consent.

Council Member Appelbaum moved, seconded by Council Member Shoemaker, to amend the agenda by adding Item 8E at the request of Council Members Plass and Weaver. The motion passed 9:0 at 7:23 PM.

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 ACCEPT THE OCTOBER 28, 2014 STUDY SESSION SUMMARY ON THE ACCESS MANAGEMENT AND PARKING STUDY AND PROVISION OF INFORMATION REGARDING PARKING REVENUES AND EXPENSES AND DOWNTOWN GARAGE UTILIZATION**
 - B. **CONSIDERATION OF A MOTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH BOULDER COUNTY AND COLORADO DEPARTMENT OF TRANSPORTATION FOR THE PROVISION OF CONSTRUCTION AND MAINTENANCE THE US 36 BIKEWAY AND THE US 36 DAVIDSON MESA SCENIC OVERLOOK.**
 - C. **COUNCIL CONSIDERATION OF A RESOLUTION NO. 1148 APPROVING AND ADOPTING AMENDMENTS TO THE BEVERAGE LICENSING AUTHORITY RULES OF PROCEDURE.**
 - D. **THIRD READING AND CONSIDERATION OF A MOTION TO ADOPT AND 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.**

- E. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 8014 APPROVING SUPPLEMENTAL APPROPRIATIONS TO THE 2014 BUDGET; AND**
- CONSIDERATION OF A MOTION TO ADJOURN FROM THE BOULDER CITY COUNCIL AND CONVENE AS THE CENTRAL AREA GENERAL IMPROVEMENT DISTRICT BOARD OF DIRECTORS**
- F. **CONSIDERATION OF A MOTION TO ADOPT RESOLUTION NO. 270 AMENDING THE 2014 DOWNTOWN COMMERCIAL DISTRICT FUND (FORMERLY CAGID FUND) BUDGET; AND**
- CONSIDERATION OF A MOTION TO ADJOURN FROM THE CAGID BOARD OF DIRECTORS AND RECONVENE AS THE BOULDER CITY COUNCIL.**
- G. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY ORDINANCE NO. 8018 AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO CREATE AN ADDITIONAL METHOD OF PROPERTY VALUATION FOR THE DETERMINATION OF WHETHER PROPOSED WORK ON A PROPERTY TRIGGERS UPGRADES TO LIGHTING, LANDSCAPING, SITE ACCESS AND NON-CONFORMING DRIVE THROUGHES UNDER THE LAND USE CODE.**
- H. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY ORDINANCE NO. 8019 AMENDING EMERGENCY ORDINANCE NO. 7985 TO CORRECT THE LEGAL DESCRIPTION FOR THE ANNEXATION AREA OF THE PROPERTY AT 2130 TAMARACK AVENUE.**
- I. **INTRODUCTION, FIRST READING, ORDER TO PUBLISH BY TITLE ONLY AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 8020 AMENDING CHAPTER 6-16, B.R.C. 1981, AMENDING SECTIONS 6-16-2 "DEFINITIONS," AND 6-16-3 "LICENSE REQUIRED" TO EXTEND THE TIME FOR MEDICAL MARIJUANA BUSINESSES TO CONVERT TO RECREATIONAL MARIJUANA BUSINESSES FROM DECEMBER 31, 2014 TO MARCH 31, 2015.**
- J. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY ORDINANCE NO. 8021 AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF BOULDER AND COMCAST OF COLORADO IV, LLC, TO EXTEND THE TERM OF THE AGREEMENT BY 120 DAYS.**
- K. **CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO THE ANNEXATION AND INITIAL ZONING OF THE PROPERTIES IDENTIFIED AS 1950 RIVERSIDE DRIVE, 4415 GARNET LANE, 1085 GAPTER ROAD, 2200 EMERALD ROAD AND 2350 NORWOOD AVENUE:**

1. **A RESOLUTION FINDING THE ANNEXATION PETITION FOR EACH PROPERTY IN COMPLIANCE WITH STATE STATUTES AND ESTABLISHING JANUARY 20, 2015 AS THE DATE FOR A PUBLIC HEARING; AND**
2. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY, SIX ORDINANCES ANNEXING THE PROPERTIES WITH AN INITIAL ZONING AS FOLLOWS:**

A. 1950 RIVERSIDE DR.

PROPOSED ZONING: RESIDENTIAL-ESTATE

APPLICANT/OWNER: SEANA GRADY

B. 4415 GARNET LN. AND A PORTION OF THE GARNET LANE RIGHT-OF-WAY

PROPOSED ZONING: RESIDENTIAL-ESTATE

APPLICANT/OWNER: FRANK ALEXANDER

C. 1085 GAPTER RD.

PROPOSED ZONING: RESIDENTIAL-RURAL 2

APPLICANT/OWNER: SILVANO AND ELVIRA DELUCA

D. 2200 EMERALD RD.

PROPOSED ZONING: RESIDENTIAL-RURAL 1

APPLICANT/OWNER: STEPHEN AND AMY CARPENTER

E. 2350 NORWOOD AV.

PROPOSED ZONING: RESIDENTIAL-ESTATE

APPLICANT/OWNER: NORWOOD GARDEN, LLC

Council Member Cowles moved, seconded by Council Member Morzel, to accept the consent agenda, including amendments made to Items 3C and 3I (including Ordinance 8020) with the understanding staff will bring forward a separate emergency ordinance on December 16 with language that would remove the prohibition on marijuana merchandise for adults. The motion was passed 9:0 at 7:45 PM.

4. POTENTIAL CALL UP CHECK IN - None

5. PUBLIC HEARINGS

- A. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 8010 TO REZONE THE PROPERTY LOCATED AT 5400 SPINE ROAD, FROM INDUSTRIAL – GENERAL TO BUSINESS COMMUNITY-2, CONSISTENT WITH THE BOULDER VALLEY COMPREHENSIVE PLAN LAND USE DESIGNATION OF COMMUNITY BUSINESS.**

The staff presentation on this item was provided by Senior Planner Elaine McLaughlin.

Public Hearing – There were no speakers to this item and the public hearing was closed at 7:53 PM.

Council Member Young moved, seconded by Council Member Jones to adopt Ordinance No. 8010 to rezone the property located at 5400 Spine Road, from Industrial – General to Business Community-2, consistent with the Boulder Valley Comprehensive Plan land use designation of Community Business. The motion carried 9:0 at 7:54 PM.

B. CONSIDERATION OF THE FOLLOWING ITEMS RELATED TO OPEN SPACE PROPERTY:

- 1) CONSIDERATION OF A MOTION TO APPROVE THE DISPOSAL OF 11 NONCONTIGUOUS, PAVED PARCELS OF OPEN SPACE LAND TO THE CITY OF BOULDER TRANSPORTATION DEPARTMENT FOR THE PURPOSE OF ELECTRIC BICYCLE USE AS A MEANS OF ALTERNATE TRANSPORTATION. THIS IS A DISPOSAL OF OPEN SPACE LAND PURSUANT TO ARTICLE XII, SECTION 177, OF THE BOULDER CITY CHARTER.**
- 2) DISCUSSION OF THE PROCESS FOR IDENTIFYING OPEN SPACE USES AND DISPOSAL OF OPEN SPACE LANDS.**

The staff presentation on this item was provided by Director of Open Space Mike Patton.

Tom Isaacson, Chair of the Open Space Board of Trustees (OSBT) and member of the Greenways Advisory Committee offered further comments.

The Public Hearing began at 8:35 PM.

1. Allyn Feinberg – System to dispose of Open Space has worked for 30 years. She asked that the City Attorney be directed to drop this issue and allow Open Space to proceed with its work.
2. Steve Pomerance – Passing an ordinance does not change what Charter Section 177 states. This will create a problem.
3. Molly Davis – The Charter works well and she does not feel comfortable taking action outside of the Charter.

There being no more speakers, the public hearing was closed at 8:45 PM

Council Member Shoemaker moved, seconded by Council Member Cowles to approve the disposal of 11 noncontiguous, paved parcels of Open Space land to the

City of Boulder, Transportation Department, for the purpose of electric bicycle use as a means of alternate transportation. This is a disposal of Open Space land pursuant to Article XII, Section 177, of the Boulder City Charter. The motion carried 9:0 at 8:48 PM.

After discussion, the City Council directed staff to draft an ordinance to state that conveying or otherwise transferring management responsibilities for any parcel of Open Space to any other department of the city constitutes a disposal of Open Space land which is subject to all applicable city charter provisions including without limitation Section 177.

6. MATTERS FROM CITY MANAGER

A. REQUEST FOR COUNCIL DIRECTION REGARDING ECOASSES

The City Manager provided Council with the latest update on the Tax Extenders Bill, which may be passed by the end of this week. It would allow an exemption to treat EcoPasses similar to parking (\$250 before becoming a taxable benefit).

Chief Financial Officer Bob Eichen shared an update on EcoPasses. There is disagreement with the IRS regarding two elements of EcoPasses.

1. The City believes that the value of an EcoPass should be the discounted price we are able to negotiate (any large group could also negotiate a reduced price) v. the full value of an EcoPass to an individual;
2. The City does not view the EcoPass as a fringe benefit but the pursuit of a City goal.

The City Manager stated it was her intent to hold harmless the employees for this debt. The City would cover this expense (estimated at \$330,000) by grossing up employee salaries to cover this tax; Council would need to make a motion if they disagreed.

Mayor Appelbaum moved, seconded by Council Member Plass to direct the City Manager to enter into the contract with RTD for 2015 with the understanding that employees will be covered from any tax liability.

7. MATTERS FROM CITY ATTORNEY

- A.** Consideration of a motion to amend the Council Rules of Procedure to add a new Section XVII Executive Sessions.

Staff presentation presented by Deputy City Attorney David Gehr.

1. Item D – Council may direct staff (other than the City Manager and City Attorney) and consultants to leave the room during executive session.
2. Item K – Destruction of Recordings/Records – this is the minimum length of time that the records must be retained according to the State retention schedule recently adopted by Council. The retention schedule allows for “Exceptions from General Retention” that Council could establish administrative procedures where council is advised prior to destruction and this action would require an affirmative vote.

Council Member Jones moved, seconded by Council Member Weaver, to approve the amendments as set forth on the pink handout with the rewriting of Section K to say: all recordings of executive sessions shall be maintained until December 31, 2022 unless litigation relating to matters discussed is initiated or pending during that time, in which case the recording shall be maintained until the conclusion of the litigation. An affirmative vote of the City Council is required before any such records are destroyed.

8. **MATTERS FROM MAYOR AND MEMBERS**

A. POTENTIAL CALL UPS

B. MAYOR PRO TEM ELECTION

Council Member Plass withdrew his name from consideration and voiced his support for Council Member Jones as Mayor Pro Tem.

Nominations were opened: Council Member Morzel nominated Council Member Jones. Nominations were closed.

Council Member Jones was elected by acclamation as Mayor Pro Tem.

Mayor Appelbaum moved to ratify the election of Council Member Jones as Mayor Pro Tem.

C. MEETING MANAGEMENT

Council Members Karakehian and Morzel suggested that a block of 45 minutes be set aside at the council retreat to discuss meeting management.

D. Kauffman Foundation Report from Council Member Karakehian

Council Member Karakehian attended this conference of mayors in Louisville, Kentucky. He stated the mission of the Kauffman Foundation is “to help individuals attain economic independence by advancing education achievement and entrepreneurial success.” The topic for this year’s conference was entrepreneurship and “What Cities Can Do to Help Cities become more Successful.” The city of Boulder was featured at the conference in “Entrepreneurship Trends in Boulder, Colorado” and highlighted our success in creating jobs. He presented at the conference and prepared by gathering talking points from each department, the Chamber of Commerce and the Convention and Visitors Bureau; he was asked by conference participants to provide information regarding the marijuana business. It was a great experience and he asked the Kauffman Foundation to consider Boulder for its next event.

E. Discussion Regarding Request from Council Members Plass and Weaver

Council Members Plass and Weaver brought forward a discussion regarding a lack of clarity with some board members about the role boards have with Council, when and how to bring forward items to Council’s attention and whether boards had the authority to create more sub-committees and hold hearings. Council Member Weaver stated that staff does not necessarily need to attend sub-committee meetings. Sub-committees bring back ideas to the entire board (including staff) for review. Boards should not direct staff workload without Council approval.

Council validated the important work that boards and commission do for Council and recommended that they not wait to communicate with Council just through the annual letter for the Council Retreat. They also reminded board members that Council had at the October study session encouraged boards to generate ideas and problem solve. Council stressed that boards are advisory to the Council and that Council sets the work plan and establishes policy.

The City Manager addressed practical concerns that the addition of new sub-committees would impact the workload of staff. The number of night meetings that staff attends had increased dramatically in 2014. Staff needs a manageable work plan; new items displace items already in the work plan. The question arises as to who was setting priorities for staff and the capacity of staff to work late night meetings week after week.

Council also discussed that the Charter and BRC are a patchwork of code that can be difficult to follow with a variety of styles used. Council will discuss this topic and a potential cleanup of the Charter language at the Retreat.

Council noted that the Council Boards and Commissions sub-committee had devised the template for the annual letter to Council requesting information from each board about their concerns, direction of work and what they think Council

should be working on. The Boards and Commissions should use the annual letter to let Council know the majority opinion about concerns and direction their boards should take.

This topic was added to the Council Retreat agenda.

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

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

Vote was taken on the motion to direct the City Manager to enter into the contract with RTD for 2015 with the understanding that employees will be covered from any tax liability. Motion passed 9:0 at 10:55 PM.

Vote was taken on the motion, to approve the amendments as set forth on the pink handout with the rewriting of Section K to say: all recordings of executive sessions shall be maintained until December 31, 2022 unless litigation relating to matters discussed is initiated or pending during that time, in which case the recording shall be maintained until the conclusion of the litigation. An affirmative vote of the City Council is required before any such records are destroyed. Motion passed 9:0 at 10:55 PM.

Vote was taken on the motion, to ratify the election of Council Member Jones as Mayor Pro Tem. Motion passed 9:0 at 10:56 PM.

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

The City Clerk requested that council members fill out and return the CAC rotation schedule and vacation schedule.

Council Member Shoemaker gave his fellow council members the book *The Omnivore's Dilemma* as an interesting book to read that ties in with the current Council discussion on our food system.

12. **ADJOURNMENT**
There being no further business to come before council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED on December 2, 2014 at 10:58 PM.

Approved this 7th day of April 2015.

ATTEST:
Alisa Lewis, City Clerk

APPROVED
Matthew Appelbaum, Mayor

**CITY COUNCIL PROCEEDINGS
CITY OF BOULDER
Thursday, February 12, 2015**

1. CALL TO ORDER AND ROLL CALL

Mayor Appelbaum called the February 12, 2015 Special City Council meeting to order at 6:01 PM in Council Chambers.

Those present were: Mayor Appelbaum and Council Members Cowles, Jones, Karakehian, Morzel, Plass, Shoemaker, Weaver and Young

A. CONSIDERATION OF A MOTION TO GO INTO EXECUTIVE SESSION FOR LEGAL ADVICE AND DISCUSSION REGARDING MUNICIPALIZATION STRATEGY

Mayor Appelbaum moved, seconded by Council Member Morzel, to adjourn to executive session for the purpose of receiving legal advice and discussion regarding Municipalization strategy. The motion carried 9:0. Vote was taken at 6:03 PM.

The Boulder City Council adjourned into executive session to the first floor conference room in the New Britain Building.

At 8:56 PM the council reconvened in the Council Chambers.

City Attorney Carr stated that the council was responsible for disclosing any conversation during an executive session if it was outside the scope of discussion allowed by the Charter amendment approved by the voters on November 4, 2014. He asked if there were any such disclosures to be made. There were none.

2. ADJOURNMENT

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED on February 12, 2015 at 8:57 PM.

Approved this 7th day of April 2015.

APPROVED BY:

Matthew Appelbaum
Mayor

ATTEST:

Alisa D. Lewis,
City Clerk



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: Consideration of a motion to accept the summary of the Feb. 24, 2015 Study Session Summary on the 2014 Transportation Master Plan Implementation Six-month Update.

PRESENTER/S

Maureen Rait, Executive Director of Public Works and Acting City Manager
Michael Gardner-Sweeney, Acting Director of Public Works for Transportation
Kathleen Bracke, GO Boulder Manager
Chris Hagelin, Senior Transportation Planner
Dave (DK) Kemp, Senior Transportation Planner
Marni Ratzel, Senior Transportation Planner
Randall Rutsch, Senior Transportation Planner
Natalie Stiffler, Transportation Planner II

EXECUTIVE SUMMARY

This agenda item provides a summary of the Feb. 24, 2015 City Council study session regarding the 2014 Transportation Master Plan (TMP) implementation update. The study session provided council with the results of the last six months of technical work and public process on implementation activities in the five TMP Focus Areas. This work is guided by the TMP Action Plan, approved by Council as part of the 2014 TMP.

Highlights of the past six months of implementation include:

- Securing \$11.5 million of funding for local transportation improvement projects and regional transit/BRT projects through the Denver Regional Council of Governments (DRCOG) competitive funding process;
- Ongoing collaboration with integrated land use and transportation projects, including Envision East Arapahoe, Civic Area, AMPS, Housing Boulder, Climate Commitment, and the 2015 Boulder Valley Comprehensive Plan Update;
- Work with agency partners pushing for real-time travel information, continued work on the communitywide Eco Pass program, and improving the service plan for the US 36 Bus Rapid Transit system;

- Continuation of the Living Lab innovations, including preparing to pilot corridor-based complete street repurposing (rightsizing) projects;
- Refinement of Transportation Demand Management (TDM) strategies in coordination with the city’s Access Management and Parking Strategy (AMPS), including enhancing the city’s TDM Toolkit for new development;
- Completion of the 2014 Boulder Valley Employee survey, along with other transportation- related evaluation measures to gauge ongoing progress; and
- Preparing for the next *Transportation Report on Progress* document, *Safe Streets Boulder* report, and Web-based dashboard, scheduled for completion by end of 2015.

Attachment A is a summary of the presentation and discussion with City Council.

STAFF RECOMMENDATION

Staff recommends approval of the summary of the Feb. 24, 2015 Study Session Summary on the 2014 Transportation Master Plan implementation.

Suggested Motion Language:

Staff recommends council consideration of this summary and action in the form of the following motion:

Motion to accept the summary (**Attachment A**) of the Feb. 24, 2015 Study Session Summary on the 2014 Transportation Master Plan implementation.

BACKGROUND

The background information for this topic can be found in the [Study Session memorandum](#) dated Feb. 24, 2015.

NEXT STEPS

City Council’s feedback from the Feb. 24 discussion will be incorporated into the implementation efforts for the 2014 TMP. In particular, the “enhanced and focused” approach will be used for the Phase II Living Lab public process for piloting the right-sizing of candidate “Complete Street” corridors, including Iris, Folsom, 55th, and 63rd streets. Staff will continue to convey city concerns and community feedback to RTD in cooperation with our partner agencies and US36 Mayors and Commissioners Coalition regarding the proposed US36 Bus Rapid Transit (BRT) service plan and regional fare study recommendations. Council will be briefed on the potential TIGER grant proposal once that federal funding solicitation is released and a proposal is developed in partnership with University of Colorado (CU). The city will continue to participate with regional partners to advance exploration of Community-wide Eco Pass as well as regional BRT corridor studies for SH119 and SH7. More detailed information will be provided to City Council regarding the Transportation Demand Management (TDM) Tool Kit for new development as part of the AMPS study session in May. The next TMP progress update with Council is scheduled for August 2015.

On-going updates regarding the TMP implementation are available at www.BoulderTMP.net

ATTACHMENTS

- A. Feb. 24, 2015 Study Session Summary on the 2014 Transportation Master Plan implementation.
- B. US 36 Mayors & Commissioners Coalition and 36 Commuting Solutions Consolidated Comments on RTD's Proposed US36 BRT Operating Plan and Fare Study Recommendations

Feb. 24, 2015 Study Session 2014 TMP Implementation Six-month Update

PRESENT:

City Council: Mayor Matt Appelbaum, Mayor Pro Tem George Karakehian, Council Members Macon Cowles, Suzanne Jones, Lisa Morzel, Tim Plass, Andrew Shoemaker, Sam Weaver and Mary Young

Staff members: Maureen Rait, Executive Director of Public Works and Acting City Manager; Michael Gardner-Sweeney, Acting Director of Public Works for Transportation; Kathleen Bracke, GO Boulder Manager; Chris Hagelin, Senior Transportation Planner; Dave (DK) Kemp, Senior Transportation Planner; Marni Ratzel, Senior Transportation Planner; Randall Rutsch, Senior Transportation Planner, Natalie Stiffler, Transportation Planner II

PURPOSE

The purpose of this study session was to present a six month update of the technical and public process work in the five Focus Areas of the 2014 Transportation Master Plan (TMP). These Focus Areas are:

- Funding;
- Integration with Sustainability Initiatives;
- Complete Streets: Transit Planning, Bike and Pedestrian Innovations;
- Regional; and,
- Transportation Demand Management (TDM)

Also included were the refinements and metrics work for the nine measurable objectives of the TMP. City Council was asked to provide feedback on the implementation work and public process in these Focus Areas.

OVERVIEW OF THE PRESENTATION AND DISCUSSION

Michael Gardner-Sweeney, Acting Director of Public Works for Transportation, introduced the presentation topics and purpose for the session. Kathleen Bracke, GO Boulder Manager, presented the highlights of the implementation work in each of the TMP Focus Areas. This implementation work is guided by the TMP Action Plan contains anticipated work items for the immediate- (2014-2016), mid- (2017-2020) and long-term (2020-2035) time periods.

The study session presentation highlighted the technical work and public process activities for each of the following TMP Focus Areas:

- Funding- The city was successful in receiving \$11.5 million through the Transportation Improvement Program (TIP) process and supported projects submitted by CU, Boulder County and RTD for bike/pedestrian facilities and regional transit/BRT corridor studies.

- Integrate with Sustainability Initiatives- On-going city-wide integration and collaborative planning processes include Envision East Arapahoe, Civic Area, AMPS, Housing Boulder, Climate Commitment, and the 2015 Boulder Valley Comprehensive Plan Update.
- Complete Streets- The Complete Streets Focus Area includes all modes of travel but significant implementation work is in the following areas:
 - Transit Planning

City staff has been working with local and regional partners to review and comment on RTD service plans for US 36 bus rapid transit (BRT) service, local service changes related to BRT and Boulder Junction opening, and the RTD Fare Study. There are numerous, interrelated issues with each of these efforts and staff continue to work with our partners, including the US36 Mayors and Commissioners Coalition (MCC) and RTD to address these concerns. The consolidated comments from the MCC and US 36 Commuting Solutions are included as Attachment B. Work has also progressed on the North Boulder Mobility Hub concepts, Via vehicle replacement and real time information. In partnership with CU, the city is also working on a potential grant proposal for an eastside circulator that would link Williams Village, the CU East Campus and Boulder Junction.
 - Bike and Pedestrian Innovations – Living Laboratory

The first phase of Living Laboratory projects have been bike focused and opportunistic, with each public process focusing on the near-by area prior to installation and on collecting technical data and community feedback on the innovative facility types throughout the 12-18 month demonstration period. The Living Lab Phase II projects will involve the potential ‘right sizing’ of four candidate “Complete Streets” corridors, including Iris, Folsom, 55th and 63rd. . These changes would include restriping and signing the streets to repurpose the roadway space to increase the safety of the corridor for all users. These corridors offer the opportunity to enhance comfort and safety for people using all modes of transportation, but involve greater tradeoffs than the Phase I projects. Consequently, two potential approaches to public process were presented:

 - an “enhanced and focused” process that would include open houses and public hearings before the Transportation Advisory Board and Council with initial installation in summer 2015 and the demonstration period continuing from mid-2015 through winter 2016; or,
 - a Community Environmental Assessment Process (CEAP) type process involving an extensive exploration of design options and alternatives analysis with likely initial installation beginning in the summer 2016 and the demonstration process continuing through winter of 2017.

- Regional- The city has actively supported regional funding for regional BRT studies, including corridor studies on SH 119 and SH 7 and a regional RTD arterial BRT study. And staff is actively participating in planning for extending the inter-regional FLEX transit service to Boulder and supported regional funding for this service.
- TDM- Following the joint study with Boulder County on the feasibility of implementing a community-wide Eco Pass Study, a Policy Advisory Committee and Technical Advisory Committee have been formed and started their work. As part of the Access Management and Parking Strategies (AMPS) project, board and council comments have been received on the TDM Toolkit direction and a variety of specific TDM efforts are under way. These include a revitalized outreach program, bundled “first and last mile” memberships, Civic Area access management and a parking cash-out demonstration in the downtown area.

COUNCIL QUESTIONS AND RESPONSES

Following the presentation, City Council members responded to the following questions:

1. Does council have input on the transit-related items, including RTD’s proposed US36 BRT service plan and fare study recommendations and the potential TIGER grant application with the University of Colorado (CU)?
2. Does council have feedback on the proposed approach, including the public engagement process, for the Living Lab corridor projects planned for 2015?
3. Does council have any additional questions or comments regarding the Transportation Demand Management (TDM)-related items, including:
 - The proposed TDM Toolkit enhancements for new development, based on the summarized feedback from boards and council;
 - The communitywide Eco Pass analysis with Boulder County?
4. Does council have questions or feedback on the proposed metrics and evaluation process planned for 2015, which will guide the development of the next Transportation Report on Progress document, Safe Streets Boulder report, and Web-based dashboard?

General Conclusions Based on City Council Discussion

City Council is supportive of the overall TMP implementation activities and approaches described in the memo and staff presentation.. While there are significant concerns with the current RTD proposals, council supports the staff comments and continued efforts to work with our US 36 corridor partners to improve each of these. Council agrees that we should continue the Living Lab approach of piloting innovations and use the “enhanced and focused” public process approach for the Phase II arterial candidate corridors right-sizing planning efforts. Council supports the Community wide Eco Pass committees and study process and the other TDM efforts. Council supports continued improvement in our measurable objectives and the ongoing survey and reporting program.

General Comments from the City Council Discussion

The council's discussion and questions included the following major areas. The staff response is in italics following questions from council.

- Council members expressed concerns with many aspects of the proposed RTD US 36 BRT service plan and fare study. Mayor Appelbaum provided an overview of the interrelated issues in dealing with the RTD proposals and corridor efforts in response. These include finishing the US 36 BRT project in the best way possible, providing improved BRT service without taking other things away, and addressing the significant equity issues with the current fare proposals. Council members generally agreed that all of these are vitally important to the Boulder community and can best be addressed in cooperation with our corridor partners, including working through the US36 Mayors and Commissioners Coalition (MCC). The consolidated comments from the MCC and US 36 Commuting Solutions are included as Attachment B.

Staff will continue to convey city concerns and community feedback to RTD in cooperation with our partner agencies and US36 Mayors and Commissioners Coalition regarding the proposed US36 Bus Rapid Transit (BRT) service plan and regional fare study recommendations.

- There were several comments on the North Boulder Mobility Hub. These included wondering if this is the best place, how we can address commute travel from the east, and that the concepts look far too suburban to be an appropriate entryway to the community. One council member noted that transit no longer serves the northern neighborhoods and that this facility would improve transit access for residents of those areas. Several council members agreed that the current use of the area as a materials storage area for highway maintenance is not an appropriate entryway.

The North Boulder Mobility Hub concept came from both the TMP and the North Boulder Area Plan public process. The property is excess CDOT right of way that may be available for little cost and is used for material storage which is not a desirable entry feature to the city. There may be the opportunity to develop additional uses on the site with a more urban design and attractive gateway features being the desired outcome.

- There were a number of comments related to the Living Labs Phase I and Phase II efforts. Council is supportive of the Living Lab approach to test innovative treatments and receive community feedback. Council is interested in seeing the evaluation results from all of the Phase I projects and some members feel that several of the Phase I projects, such as the University back in parking and parking protected bike lanes, are more problematic than the others. Concerns expressed included reduced safety on the street, the number of tickets issued, winter

maintenance, and access to the curb for people with disabilities, seniors and families with children. Council members asked how we communicate and educate drivers and the steps taken to improve maintenance and respond to comments. A number of council members noted that the candidate corridors for the Phase II projects seem like the right ones and that 63rd in particular needs some help. Council members also noted that the Phase II projects are more complex and will affect people at a different level than Phase I so we need a more comprehensive outreach approach. . Council members support moving forward quickly with the Phase II work based on the “enhanced and focused” public process approach.

Staff will be bringing initial results of the Phase I projects to boards and Council by mid-year and will use this information to help shape the Phase II Living Lab program. . The evaluation process includes quantitative and qualitative data collection and will provide a comprehensive assessment of the pilot projects. The Living Lab process has also provided the opportunity to improve our maintenance practice and response to citizen comments. This is particularly true with the University parking protected bike lanes as they were installed in the fall and maintenance has been challenging in the recent snow events. However, the snow clearing practice has improved and can continue to improve as we gain more experience with these facilities.

- Council members generally support the existing data collection approach, TMP measurable objectives, and focus on continuous improvement efforts. Several council members suggested opportunities to help put these measures in context and for staff to identify how the various transportation projects and programs are directly tied to achieving the desired goals and targets. . Suggestions include recognizing that VMT has not increased despite population increase, what it will take to get additional mode shift given that the students are a large population already not driving, and assessing which populations will respond the most to having an Eco Pass.
- Several council members noted that crosswalks were not mentioned in the materials and that the issue of crossing the street remains important. It was also suggested that the Federal Labs would be potential place to focus our TDM and data collection efforts.
- Council supported the next steps in the TMP implementation work items for 2015 and will receive the next six month update in August 2015.

**US 36 Mayors & Commissioners Coalition
and 36 Commuting Solutions**

**Consolidated Comments on RTD’s Proposed US36 BRT
Operating Plan and Fare Study Recommendations**

March 10, 2015

US 36 Bus Rapid Transit is anticipated to be a highly visible, stellar example of BRT for the region and the nation. The FasTracks program is intended to be a service enhancement program, so no area currently served by routes operating along the US 36 corridor should face service level reductions or service elimination as a result of FasTracks. Degradation of existing service to any areas along the US 36 corridor communities with the implementation of US 36 BRT is unacceptable.

The proposed service plan does not take into account areas of already occurring increased ridership demand associated with development and population growth. Indeed, in some growing areas of the corridor, less direct service is proposed than currently exists. We believe the service plan should improve service to both existing and new emerging markets for US 36 BRT to be successful. To that end, we have followed the following principles in developing our comments:

- BRT should serve existing and new/emerging markets and attract new transit riders to the US 36 corridor.
- BRT should fulfill all of the enhanced service committed to in the FasTracks Record of Decision from the US 36 BRT Environmental Impact Statement (EIS).
- Service should be designed to have capacity on opening day to ensure a high quality customer experience.
- US36 BRT service should maximize investment in US 36 corridor improvements.
- RTD operating investment in the US 36 corridor should be comparable to other corridors approved under the FasTracks program.

To that end, we provide the following combined comments on the draft US36 BRT Operating Plan and the Fare Study Recommendations, since they are so closely inter-related, are under consideration at the same time, and must be integrated if US 36 BRT is to be successful.

We Support the following recommendations:

- **The Local fare classification for the BV (and other All-Station routes).** BV riders will pay \$2.60 under the proposed policy. This proposal treats All Station BRT similarly to the proposed Light Rail fare policy of eliminating zones, and classifying all LRT as local service.

- **Increased frequency of 15-minute All Station service mid-day and 10-minute frequency in the peak commute times.** The improved service to mid-corridor communities is beneficial.
- **New DWB Route adds additional capacity for Broomfield and Westminster to Union Station.** These are very high demand routes, and the proposal will improve service to these stations.
- **All-day fares at twice the single fare.** This proposal is a thoughtful and creative approach to addressing equity issues and concerns.
- **SkyRide service every 30-minutes from Boulder County to DIA with connection to Northwest Parkway** will provide a faster trip than today. Hourly service from Downtown Boulder Transit Center and Boulder Junction at Depot Square results in half hour service from Table Mesa Station. The use of the Northwest Parkway to DIA for these trips will provide a travel time savings for passengers.
- **Proposed SkyRide fare structure reduces costs from \$13 to \$10.** The fare reduction for SkyRide service will encourage more use.

Our concerns and associated recommendations are:

- **Key customers will experience less frequent, slower or complete removal of service because of FasTracks.** A 50% decrease of service frequency along the Broadway corridor (from 6 minutes to 10 minutes) in what is currently one of the highest ridership portions of the corridor. Eliminating Mid-day Express service between Downtown Boulder Transit Center and DUS impacts Boulder, Louisville and Superior customers.
 - a. Recommendation: Retain mid-day express service along the corridor.
 - b. Recommendation: Increase peak-hour express service along the Broadway corridor from 6 minutes to 5 minutes. This will help off-set the Flatiron Flyer's reduced per-bus storage capacity for bikes.
- **Less Direct/longer travel time to DIA for Broomfield and Westminster riders due to change in SkyRide routing.**
 - Recommendation: RTD should implement a one-seat ride to DIA for Broomfield and Westminster riders.
- **Decreased service/elimination of direct service to the Boulder Flatiron Business Park/East Boulder area through elimination of Route S.**
 - Recommendation: Retain current "one seat service" from Denver to the Flatirons Business Park and East Boulder (Hospital/East Campus/employment areas).
- **Eliminating Route 209 service connecting the Frasier Meadows neighborhood/Retirement Community to BRT.**
 - Recommendation: Restore service.
- **Eliminating service between the times of midnight-2:00 a.m.**
 - Recommendation: Restore Service.

- **Increased travel time and decreased frequency of service from Civic Center Station to the corridor by converting the HX route to local/all station service.**

Recommendation: Retain Express level of service and current frequency between Civic Center and the corridor serving McCaslin and Flatiron Stations.

- **Lack of Service to Developed Markets**

- a. **No mid-day service is planned from Boulder Junction to Denver Civic Center.** The Boulder Junction to Civic Center Route has sufficient development currently under construction and demand to warrant the addition of 30 minute, mid-day service for opening day.

Recommendation: Provide mid-day service from Boulder Junction to Civic Center.

- b. **No direct service from DUS to Boulder Junction-** If a rider from Boulder Junction wants to begin or end a trip at Denver Union Station, a transfer will be required to reach Boulder Junction.

Recommendation: Retain current express service with current frequencies from Boulder Junction to Civic Center as an express route; otherwise it will be degrading service for current HX riders.

- c. **Flatiron PnR Service does not receive service levels in accordance with the significant development that is underway.**

Recommendation: Maintain the HX service to this station.

- d. **No airport service is planned from Boulder Junction to DIA.** Boulder Junction includes the Hyatt Hotel and sufficient development currently under construction to warrant the hourly headways in the peak.

Recommendation: Provide airport service from Boulder Junction at Depot Square to DIA, alternating the west end trip terminals between Boulder Transit Center and Boulder Junction at Depot Square.

- **Adjust Proposed Fare Structure for US 36 BRT Service.** In some cases, identical trips are charged different fares. The US 36 BRT service is categorized into two service types; “All Station” and “Express”. The “All Station” service is proposed to pay the local fare (\$2.60), while Express service would pay the regional fare (\$5.50). For example, if someone is going from McCaslin into Boulder, from Westminster to DUS, or stops within Boulder they would pay \$2.60 if they got on an “All Station” bus, but \$5.50 if they got on the “Express” bus even though the trip is identical. A passenger would experience the same # of stops on the same type of vehicle; but would pay twice the fare. Expecting passengers to schedule their trip depending on whether the next bus is local or express is inconsistent with the concept that passengers using BRT can arrive at a station knowing a bus will arrive quickly.

- a. Recommendation: A local fare should be charged on services or service legs that have multiple stops. All westbound McCaslin trips should be classified as Local Fare Service since it stops at every station. The DWB (Broomfield/Westminster – DUS) should be classified as Local Service since it stops at intermediate stations. As well as trips within Boulder - for example trips between the Boulder Transit Center and CU.

- b. Recommendation: Price “Express BRT” service with “express” fare level, rather than regional fare.
- **Comparable Investment/Benefit With Other FasTracks Corridors.** We have two primary concerns with the proposed BRT Service Plan and Fare Study Recommendations.

The proposed BRT service plan for opening day appears to be primarily limited to the reallocation of the existing base system operating budget, with little increased (less than 11%) operating resources allocated from FasTracks. The proposed plan does not provide the US 36 BRT corridor with a meaningful increased investment in service comparable to that provided to other FasTracks corridors; rather it merely re-allocates the existing base system operations funding. FasTracks funds should be allocated to provide more robust service throughout the US 36 corridor ensuring the success of BRT for individual communities, as well as building support for expansion of BRT to other parts of the region.

Impacts of the fare study recommendations on the EcoPass have not been evaluated. We are concerned that the effects of the recommended changes on the EcoPass program have not been evaluated. We urge that a cooperative effort with corridor community involvement be undertaken to improve benefits and minimize impacts to this highly successful program.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: Consideration of a motion to approve Resolution No. 1158 declaring the city of Boulder's official intent to participate in a future issuance of a Stormwater and Flood management revenue bonds and to reimburse itself for capital expenditures undertaken in advance of such financing made from the Stormwater fund, including, without limitation, architectural, engineering, appraisal, surveying, acquisition, site preparation and other costs incidental to the commencement of construction of the financed project.

PRESENTER/S

Jane S. Brautigam, City Manager
Bob Eichen, Chief Financial Officer
Cheryl Pattelli, Director of Finance
Jeff Arthur, Director of Utilities

EXECUTIVE SUMMARY

The passage of this resolution will allow the Utilities Department to use some of their fund balance to fund expenditures if they have the opportunity to do so prior to receiving bond proceeds anticipated in July. By allowing an advance from their fund balance, Utilities can continue to actively pursue capital improvements with currently available appropriated funds up to \$30,000,000 until the closing of the upcoming storm water bonds occurs in July. When the Series 2015 bonds are issued, the current available funds can be reimbursed from the bond proceeds. This reimbursement is available for funds expended up to sixty days prior to the date of this resolution. This is being done to provide maximum flexibility for the Stormwater fund so they can continue to address capital improvement issues, and to help meet the three year 85 percent Internal Revenue Service requirements for the expenditure of municipal bond proceeds. The use of a reimbursement resolution is commonly used when issuing debt. The City has used the methodology with other bond issues to provide for effective and efficient use of resources.

The passage of this resolution is a formality required by federal tax law to allow the City to reimburse itself from bond proceeds for capital improvements prior to the bond proceeds

arriving. This resolution does not authorize the bond sale. Therefore, the impact analysis of using board and commission feedback and public feedback will be addressed when the Notice of Sale Resolution is brought to Council at a future date.

STAFF RECOMMENDATION

Suggested Motion Language:

Move to adopt Resolution No. 1158 authorizing up to \$30,000,000 of reimbursement from bond proceeds for Stormwater that could be expended between now and the arrival of the bond proceeds.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

The passage of a reimbursement resolution has no economic, environmental or social impact on residents of the City of Boulder. These impacts do occur with the Notice of Sale Resolution that is being brought to Council at the June 6th meeting.

OTHER IMPACTS

- There are no fiscal or other impacts that occur due to the passage of a reimbursement resolution.

BACKGROUND AND ANALYSIS

On some occasions, the receipt of bond proceeds cannot be timed to coincide with when money will be needed. By passing a reimbursement resolution, the Stormwater fund balance could be used to fund capital improvement projects. The fund will then be reimbursed from the bond proceeds when they are received. If the fund balance money is not needed, the reimbursement resolution expires when the bond proceeds are received and no reimbursement occurs.

The resolution is required by federal law to comply with tax exempt bonding requirements. The following items must be included in the resolution:

- An announcement and acknowledgement of the municipality's expectation to issue bonds.
- An announcement and acknowledgement that the municipality will reimburse itself from bond proceeds for capital expenditures.

If this action is not approved, the Stormwater fund cannot reimburse itself from bond proceeds if there is an unforeseen delay in the issuance of the bonds. The resolution is written to allow flexibility in the timeline in case some unexpected delay occurs.

ATTACHMENT

A: Reimbursement Resolution No. 1158

RESOLUTION 1158

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, DECLARING ITS OFFICIAL INTENT TO PARTICIPATE IN A FUTURE ISSUANCE OF STORM WATER AND FLOOD MANAGEMENT REVENUE BONDS AND TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES UNDERTAKEN IN ADVANCE OF SUCH FINANCING MADE FROM THE STORMWATER FUND, INCLUDING , WITHOUT LIMITATION, ARCHITECTURAL, ENGINEERING, APPRAISAL, SURVEYING, ACQUISITION, SITE PREPARATION AND OTHER COSTS INCIDENTAL TO THE COMMENCEMENT OF CONSTRUCTION OF THE FINANCED PROJECT.

WHEREAS, the City of Boulder (the “City”), in the State of Colorado (the “State”), is a home rule city duly organized and existing pursuant to the constitution and laws of the State and the City charter; and

WHEREAS, the City Council of the City (the “Governing Body”) is the governing body of the City; and

WHEREAS, the Governing Body has determined that it is in the best interest of the City to make or cause to be made certain capital expenditures relating to the construction, improvement, repair, replacement and equipping of various storm water and flood mitigation improvements in the City (collectively the “Projects”); and

WHEREAS, the Governing Body currently intends and reasonably expects to participate in a tax-exempt borrowing of up to \$30,000,000 to finance the Projects and to reimburse the City for capital expenditures for the Projects incurred or to be incurred subsequent to a period commencing 60 days prior to the date hereof, and ending prior to the later of 18 months of the date of such capital expenditures or the placing in service of the Projects (but in no event more than 3 years after the date of the original expenditure of such moneys); and

WHEREAS, the Governing Body hereby desires to declare its official intent, pursuant to 26 C.F.R. § 1.150-2, to reimburse the City for such capital expenditures with the proceeds of the City’s future tax-exempt borrowing.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO THAT:

Section 1. *Declaration of Official Intent.* The City shall, presently intends, and reasonably expects to finance the Projects in part with proceeds of tax exempt bonds to be issued by the City at a later date.

Section 2. *Dates of Capital Expenditures.* All of the capital expenditures covered by this Resolution will be made on and after the date which is 60 days prior to the effective date of this Resolution.

Section 3. *Issuance of Bonds, Notes or Other Obligations.* The City presently intends and reasonably expects to participate in a tax-exempt borrowing of up to \$30,000,000 within 18

months of the date of the expenditure of moneys on the Projects or the date or dates upon which the Projects are placed in service, whichever is later (but in no event more than 3 years after the date of the original expenditure of such moneys), and to allocate from said borrowing an amount not to reimburse the City for its expenditures in connection with the Projects.

Section 4. ***Confirmation of Prior Acts.*** All prior acts and doings of the officials, agents and employees of the City which are in conformity with the purpose and intent of this Resolution, and in furtherance of the Projects, shall be and the same hereby are in all respects ratified, approved and confirmed.

Section 5. ***Effective Date of Resolution.*** This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED at a regular meeting this 7th day of April, 2015.

CITY OF BOULDER, COLORADO

Mayor

Attest:

Clerk



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: Fourth reading and consideration of a motion to adopt Ordinance No. 8028 amending the building height regulations and requirements of Title 9, “Land Use Code” B.R.C. 1981 for certain areas of the city.

PRESENTER/S

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Driskell, Executive Director of Community Planning and Sustainability

Susan Richstone, Deputy Director of Community Planning and Sustainability

David Gehr, Deputy City Attorney

Charles Ferro, Development Review Manager

EXECUTIVE SUMMARY

On Jan. 20, 2015, City Council considered on first reading an ordinance that would limit height modifications in the city to specific areas. The proposed ordinance is intended to address the community concern that a height modification may be considered on any property in the city through Site Review. It would reinforce the community’s vision of an urban form that only allows higher intensity and taller buildings in select, transit-rich areas, which have been vetted and approved through a planning process such as an area plan or other public process. The proposed ordinance also includes specific circumstances in which height modifications could still be considered to avoid potential unintended consequences. Importantly, inclusion of a specific area or circumstance in the proposed exemptions list does not infer that a building height of 55 feet is appropriate or desired in the area overall or on any specific property (55 feet being the maximum potential height on any property subject to zoning control, as established by voters in the City Charter). It does, however, acknowledge that a height greater than 35 feet (or 38 feet downtown) may be appropriately considered in these areas and circumstances, and that policies and other guidance are in place to inform that consideration. Approval of any such modification would still require public review and input, and action by the planning board subject to council call-up. New development and Site Review applications could still be considered

in all areas, and Site Review would still be required for many projects per the code; however, height modifications outside of the identified areas and circumstances could not be considered.

On Feb. 19, 2015, Planning Board considered the proposed ordinance and recommended approval of the ordinance on a vote of 4 to 2 (Putnam absent), but did not recommend approval of allowing height modification requests in the identified areas. Rather, only the following exemptions were recommended:

- 1) A Site Review application that has been submitted by January 21, 2015
- 2) A Site Review application that is for an upgrade of emergency operations antennae.
- 3) A Concept Plan and Site Review application for Frasier Meadows

A complete summary of the Planning Board action is included in the new 'Board and Commission Feedback' section below.

On Feb. 26, 2014, City Council Considered second reading of the proposed ordinance, based on the version approved on first reading rather than the Planning Board recommendation, and passed the ordinance by a vote of 8-1 (Morzel opposed) with the following map amendments:

- 1) Add the portions of the Reve properties at 2100 30th and 2120 32nd Streets that are located outside out of the Transit Village Area Plan boundary.
- 2) Remove the Downtown 4 & 5 zone districts
- 3) Remove all proposed properties in the North Boulder subarea except that portion of the Armory parcel located at 4750 Broadway.
- 4) Include the area from 28th to 30th Arapahoe to Walnut (29th Street Mall).
- 5) Add the Frasier Meadows Manor properties located at 4950 Thunderbird and 350 Ponca Pl.
- 6) Add the publicly zoned portions of the Arapahoe Ave. campus of the Boulder Community Hospital located at 4747 Arapahoe

The remainder of the Transit Village (Boulder Junction), University Hill and Gunbarrel areas as well as all areas of the city impacted by topography would continue to be included as originally proposed at first reading ordinance.

Provisions were also made to allow for increased height in Industrial zones if it is necessary for a manufacturing, testing or other industrial process or equipment. Provisions were also made for emergency operation antennae as well as projects in all zoning districts if at least forty percent of the floor area of the building is used for units that meet the requirements for permanently affordable units.

On March 17, 2015, City Council unanimously approved third reading of the proposed ordinance with a sunset provision that would allow the areas of downtown north of

Canyon that are zoned Downtown 4 and 5 to become automatically eligible for height modifications through the Sire Review process upon adoption of revised Downtown Urban Design Guidelines by the City Council.

The proposed ordinance is found in **Attachment A**.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt Ordinance No. 8028 amending the building height regulations and requirements of Title 9, "Land Use Code" B.R.C. 1981 for certain areas of the city.

ATTACHMENTS

A: Ordinance No. 8028

ORDINANCE NO. 8028

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE" B.R.C. 1981 BY AMENDING THE BUILDING HEIGHT REGULATIONS AND REQUIREMENTS FOR CERTAIN AREAS OF THE CITY; AND SETTING FORTH RELATED DETAILS.

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

Section 1. The City Council finds and recites the following facts leading to the adoption of interim development regulations related to the height of buildings.

- a. The city values its built environment, as is reflected in the Boulder Valley Comprehensive Plan. 2010 BVCP, pages 18 to 32.
- b. The voter approved a height limit for buildings no greater than 55 feet in 1971.
- c. City Charter Section 84 provides the purposes of the height limitation, which applies to buildings at 55 feet and below.
- d. The Boulder Revised Code allows buildings to be constructed up to 55 feet in all zoning districts, subject to a site review approval.
- e. Increasingly, more buildings are being approved at heights up to 55 feet in multiple areas of the community.
- f. The city council intends to limit the areas where buildings can be up to 55 feet to those areas where previous planning efforts have resulted in the adoption of a plan or clear policy intent that supports more intensive forms of development or in instances where important community values are implemented or site topography may result in height-compliance hardship.
- g. The council intends to study other areas in the community where buildings that exceed the underlying permitted or conditional height may be appropriate.
- h. The City Council determined that it is in the interest of the public health safety and welfare to consider whether existing zoning standards will result in development consistent with the goals and policies of the Boulder Valley Comprehensive Plan.

Section 2. Paragraphs 9-2-14 (c)(1) is amended and a new paragraph (2) is added and subsequent paragraphs renumbered, to read:

9-2-14 Site Review.

...

1 (c) Modifications to Development Standards: The following development standards of
2 B.R.C. 1981 may be modified under the site review process set forth in this section:

3 (1) 9-7-1, "Schedule of Form and Bulk Standards" and standards referred to in that
4 section except that the standards referred to as "FAR Requirements" may not be
5 modified under this paragraph and are subject to Section 9-8-2, B.R.C. 1981 and the
maximum height or conditional height for principal buildings or uses, except as
permitted in paragraph (c)(2) below.

6 (2) The maximum height or conditional height for principal buildings or uses may be
7 modified in any of the following circumstances:

8 (A) For building or uses designated in Appendix J "Areas Where Height
9 Modifications May Be Considered."

10 (B) Industrial General, Industrial Service, and Industrial Manufacturing districts
11 if the building has two or fewer stories or if the height is necessary for a
12 manufacturing, testing or other industrial process or equipment.

13 (C) In all zoning districts, if the height modification is to allow the greater of two
14 stories or the maximum number of stories permitted in Section 9-7-1 in a
15 building and the height modification is necessary because of the topography
16 of the site.

17 (D) In all zoning districts if at least forty percent of the floor area of the building
18 is used for units that meet the requirements for permanently affordable units
19 in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.¹

20 (E) For emergency operations antenna.

21 Section 3. The council adopts Attachment A, titled, "Appendix J to Title 9 - Areas Where
22 Height Modifications May Be Considered," as an amendment to Title 9, "Land Use Code,"
23 B.R.C. 1981.

24 Section 4. The council orders the city manager to add those areas north of Canyon
25 Boulevard and within the DT-4 and DT-5 zoning districts, to the map designated as Appendix J,
"Areas Where Height Modifications May be Considered," B.R.C. 1981 after the final completion
and adoption by the City Council of amendments that are presently under review for the 2002
Downtown Urban Design Guidelines.

¹ The provisions adopted pursuant to Ordinance No. 8028 expire on April 19, 2017.

1 Section 5. The provisions of this ordinance will expire on April 19, 2017. The council
2 intends that this ordinance will expire, be amended, or replaced with subsequent legislation after
3 further study of appropriate building heights in the city.

4 Section 6. This ordinance shall apply to all building permits or land use approvals for
5 which an application is made on January 21, 2015 or thereafter, unless specifically exempted.
6 Building permit applications for a development that received a site review approval for height
7 that exceeds the permitted height on or prior to January 21, 2015 may apply for and receive
8 building permits that are necessary to construct the approved development.

9 Section 7. Complete site review applications that have been submitted to the city prior to
10 January 21, 2015 that request additional height in areas that would not permit such height under
11 this ordinance will be permitted to continue through the process under the height regulations in
12 place at the time such application is made. Complete site review applications that have been
13 submitted to the city after January 21, 2015 and before February 20, 2015 that request additional
14 height in areas that would not permit such height under this ordinance will be permitted to
15 continue through the process under the height regulations in place at the time such application
16 was made, including the standards and requirements for the version this Ordinance No 8028
17 introduced and read on first reading at the January 20, 2015 city council meeting. Such
18 applicants shall be required to pursue such development approvals and meet all requirements
19 deadlines set by the city manager and the Boulder Revised Code. Pending developments may
20 apply for and receive building permits that are necessary to construct the approved development.

21 Section 8. For the limited purposes of this ordinance, the city council suspends the
22 provisions of Subsection 9-1-5(a), “Amendments and Effect of Pending Amendments,” B.R.C.
23 1981 for the limited purpose of adopting this ordinance.
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READ ON THIRD READING, AMENDED, AND ORDERED PUBLISHED BY
TITLE ONLY this __ day of _____, 2015.

Mayor

Attest:

City Clerk

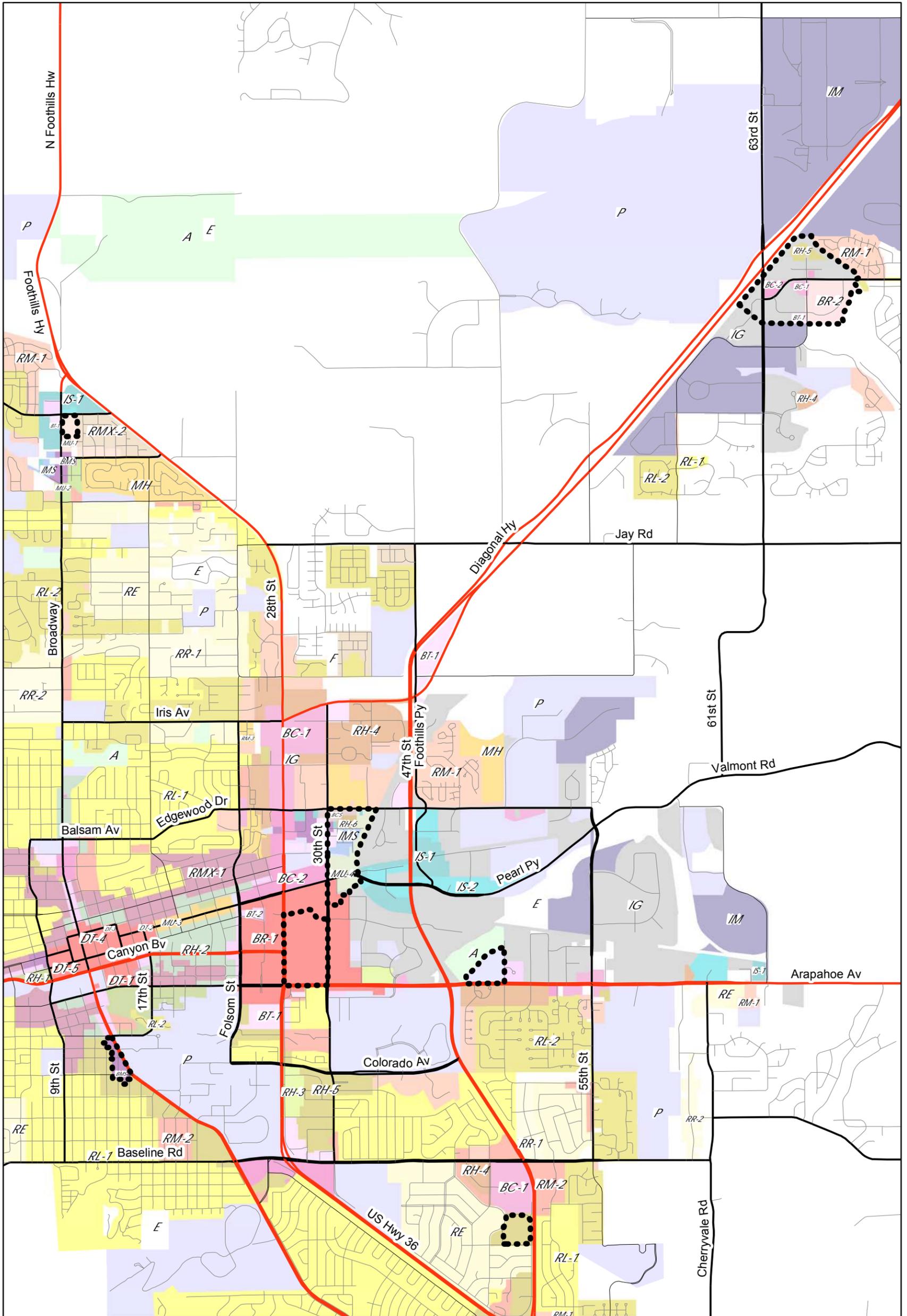
READ ON FOURTH READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this __ day of _____, 2015.

Mayor

Attest:

City Clerk

Appendix J to Title 9 – Areas Where Height Modifications May be Considered



 Areas Where Height Modifications May be Considered





**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE:

Introduction, first reading, and consideration of a motion to order published by title only Ordinance No. 8040 amending Title 9, "Land Use Code," B.R.C. 1981, to allow medical or dental clinics or offices and addiction recovery facilities as a conditional use in the Industrial General (IG) zoning district near Boulder Community Health (BCH), Foothills Campus.

PRESENTERS:

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability (CP&S)
Susan Richstone, Deputy Director, CP&S
Charles Ferro, Development Review Manager, CP&S
David Gehr, Deputy City Attorney
Hella Pannewig, Assistant City Attorney
Lesli Ellis, Comprehensive Planning Manager
Karl Guiler, Senior Planner/Code Amendment Specialist
Jeff Hirt, Planner II

EXECUTIVE SUMMARY

This agenda item is a first reading of an ordinance (**Attachment A**) amending the Land Use Code to allow medical or dental clinics or office uses and addiction recovery facilities as a conditional use in the Industrial General (IG) zoning district near the BCH Foothills campus. The conditional use approach of the ordinance is responsive to a current need and is limited in scope.

In 2014, Boulder Community Health (BCH) completed its transition from the Broadway to the Foothills campus, resulting in increasing demand for medical clinics and offices near the hospital. While the Business Transitional (BT-2) zoning district adjacent to the hospital allows medical office, vacancy rates for medical office are very low. The city has recognized the immediate need for medical offices near the Foothills campus.

The proposed ordinance amends Title 9 to allow medical or dental clinics or office uses and addiction recovery facilities as a conditional use in the Industrial General (IG) zoning district near the Boulder Community Health Foothills Campus. It applies to existing buildings with a certificate of occupancy on or before April 7, 2015, or in a building for which a building permit

application for new construction was submitted on or before April 7, 2015. It also limits changes to existing buildings to not exceed a cumulative expansion of ten percent of the existing building floor area. It does not allow for new development or redevelopment and will cause minimal change to built form.

Staff analyzed three areas near BCH as noted in the figure below. Planning Board recommended that Areas A (Pearl East) and B (Walnut East/38th and Foothills Parkway) be included in the ordinance but not Area C. Board members were concerned about incompatibility of medical office uses in Area C, which has a more industrial character. The board also recommended the inclusion of buildings for which a building permit application has been submitted on or before June 4, 2015. To prevent development of additional new medical buildings resulting from the proposed ordinance, staff is recommending that a first reading date of April 7, 2015 apply rather than the later June date.

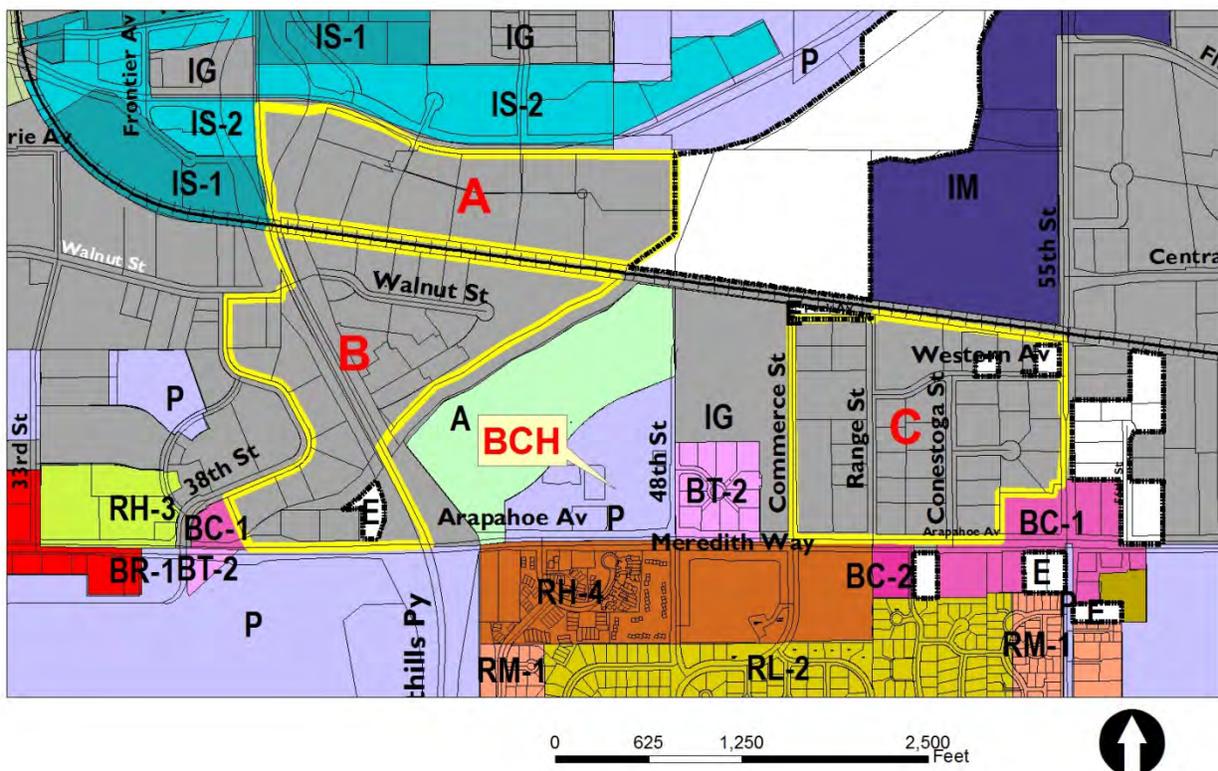


Figure 1: Possible Areas and properties within the IG zoning district where Medical or Dental Clinics or Office Uses or Addiction Recovery Facilities may be located as presented to Planning Board on March 19, 2015. (Note: Boundaries shown in yellow.)

STAFF RECOMMENDATION

Staff recommends that council consider an ordinance (**Attachment A**) that would solve an immediate need and narrowly address the need for medical clinic and office uses in the proximity of BCH. Because the ordinance applies to existing buildings and buildings with a building permit submitted, it will cause limited change and have minimal impact on adjacent businesses and neighborhoods. Overall the ordinance is consistent with community goals as noted in the analysis section of this memo.

The proposed ordinance sets forth changes to Title 9 as follows:

1. **Amending Table 2-1 (Review Processes Summary Chart)** to allow “Medical or dental clinics or office uses and addiction recovery facilities in the Industrial General (IG) zoning district near the Boulder Community Health Foothills Campus” through the conditional use review process;
 2. **Updating Table 6-1 (Use Table)** to add “Medical or dental clinics or offices and addiction recovery facilities” as a conditional use in the IG zoning district with Specific Use Standards set forth in Section 9-6-7;
 3. **Changing Section 9-6-7**, to add new specific use standards for the IG zoning district applicable to any medical or dental clinics or office use and any addiction recovery facility use to:
 - A. Ensure that the use must be located on a lot or parcel designated in Appendix K (Properties Where Medical or Dental Clinics or Office Uses and Addiction Recovery Facilities may be located in the IG Zoning District);
 - B. Require the use to be located in a building existing on the lot or parcel with a certificate of occupancy on or before April 7, 2015, or in a building for which a building permit application for new construction on the lot or parcel was submitted on or before April 7, 2015; and
 - C. Limit changes to the building to not result in a cumulative total increase in floor area of more than ten percent of the floor area of building existing or shown in the building permit application.
- **Adds Appendix K**, the map illustrating the properties where such uses may be located within the IG zoning district.

Suggested Motion

Staff requests council consideration of this matter as well as the areas and properties for inclusion in Appendix K and take action in the form of the following motion.

Suggested Motion Language:

Motion to introduce on first reading and order published by title only Ordinance No. 8040 amending Title 9, “Land Use Code,” B.R.C. 1981, to allow medical or dental clinics or offices and addiction recovery facilities as a conditional use in the Industrial General (IG) zoning district near Boulder Community Health (BCH), Foothills Campus on properties where such uses may be located within the IG zoning district to be illustrated in Appendix K in Title 9.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** Adding medical or dental clinics or office uses and addiction recovery facilities in the IG zoning district as a conditional use will enhance the options for occupying space in existing buildings and buildings permitted for construction, and therefore the economic viability of these buildings. Keeping such uses contained near BCH in the IG zoning district will minimize impacts on existing businesses, particularly service businesses.
- **Environmental:** The proposed code changes will assist in reducing vehicle miles traveled for health care providers currently driving back and forth to BCH Foothills Campus from their current offices near BCH’s North Broadway campus and other locations.
- **Social:** The proposed code changes support an important community health institution by allowing more flexibility for health care providers to locate nearby.

OTHER IMPACTS

- Fiscal: None identified.
- Staff time: The proposed code changes are within normal staff work plans.

BOARD AND COMMISSION FEEDBACK

Planning Board

On March 19, 2015, the Planning Board reviewed the proposed ordinance and recommended approval on a 7-0 vote (see motion below). The original memo to Planning Board can be found at this link: [Planning Board March 19 memo](#). **Attachment D** contains the complete minutes from the meeting.

The motions were as follows:

C. Gray, seconded by L. May, moved that the Planning Board recommend approval to the City Council of an ordinance to conditionally allow medical or dental clinics or office uses and addiction recovery facilities as a conditional use in the Industrial General zoning district in close proximity to the Boulder Community Health Foothills campus, including a recommendation to apply the ordinance in the following areas: Area A and Area B; and adding that the use must be located in an existing building or with a building for which a building permit for new construction was submitted on the lot or parcel on or before June 4, 2015.

Generally, Planning Board provided the following feedback:

- Some members of the Planning Board expressed interest in including all three areas, including Area C east of BCH, but most members expressed concerns about displacement of existing industrial uses as a primary reason for excluding Area C east of BCH. That area has a higher percentage of industrial uses as compared with Areas A and B, which as more existing office uses.
- The board requested that staff monitor applications for medical and dental offices or clinics and addiction recovery facility conditional uses under the proposed ordinance, and use that information to further understand the demand for these uses near BCH, and any displacement of existing businesses; and
- Board members emphasized the importance of multimodal connections from Areas A and B to BCH, including a suggestion to evaluate new and creative modes of transportation on the multiuse paths (e.g., allowances for electric vehicles appropriate for multiuse paths).

PUBLIC FEEDBACK

The city also notified property owners and tenants in the affected area about the draft ordinance. During the next phase, the city will coordinate engagement about the vision for the future of the area near BCH with the Boulder Valley Comprehensive Plan and will ensure broad and inclusive engagement for both planning and implementation stages.

Public testimony at the Mar. 19, 2015 Planning Board meeting included:

- A BCH representative who spoke in support of the proposed code changes, including support for including Areas A, B, and C and including permitted as well as completed buildings. He also stated that BCH has acquired most properties in the Riverbend Park (BT-2 zoning) area and are considering future redevelopment plans;

- Two medical practitioners spoke in support of the ordinance as presented, including the option for existing and permitted buildings;
- One representative for the property at 5495 Arapahoe indicated that there is space available there for medical office (this property is zoned BC-1, which allows medical office by right); and
- Two representatives from businesses in Area C who asked for clarification that this code change does not change the IG zoning district's current allowances for industrial uses, and expressed concern that introducing medical office in this area could impact existing businesses.

In advance of the Planning Board meeting, staff also heard from two businesses in Area C with the following feedback:

- One business representative requested clarification that this code change would not affect any use allowances other than medical office; and
- One business representative supported the code change, but preferred that medical office be only allowed close to Foothills Parkway.

On Feb. 4, 2015, the city held an open house and workshop as part of the Envision East Arapahoe project and provided information about the medical office topic. During the open house, staff received several supportive comments regarding allowing medical offices near the hospital and the phased approach. The project website (EnvisionEastArapahoe.com) also contained information about the topic. The Boulder Economic Council provided input that the current zoning does not adequately accommodate medical offices near BCH and stated concerns over losing industrial land, particularly land affordable to small and mid-sized companies aiming to stay in Boulder.

Medical practitioners have provided letters to City Council noting their need for clinic and office space near the BCH Foothills Campus now that BCH has completed its relocation of operations, and expressed specific interest in 4700 Pearl and that this proposed building would meet their needs. 4700 Pearl has a submitted building permit application for a new building on a currently vacant, former RTD park and ride site.

BACKGROUND

In 2014, BCH transitioned facilities including the emergency room, new services such as surgery, imaging, laboratory services, and other inpatient services from the Broadway campus to the Foothills campus on East Arapahoe. The transition has resulted in increasing demand for medical offices in close proximity to BCH. The BT-2 area near BCH currently is zoned to allow medical office, but space is limited, with a very low vacancy rate.

The surrounding Industrial General (IG) zoning district is intended for a wide range of industrial uses, research and manufacturing operations, service industrial uses, and other complimentary uses. The IG district allows “technical” offices (e.g., engineers, graphic design, etc.) and “administrative” offices (defined as in support of affiliated industrial uses). However, the IG zoning district does not allow medical clinics or offices.

Health care providers have contacted the city and expressed urgency to lease office space closer to the Foothills campus to avoid multiple daily vehicular trips across the city from the north Broadway campus to the Foothills campus. The Primary Employer Study (2013) noted this

need, and both Planning Board and City council have provided feedback on this topic. In 2013, the city conducted analysis of medical offices needs in the BCH Foothills Campus area (see link [here](#)).

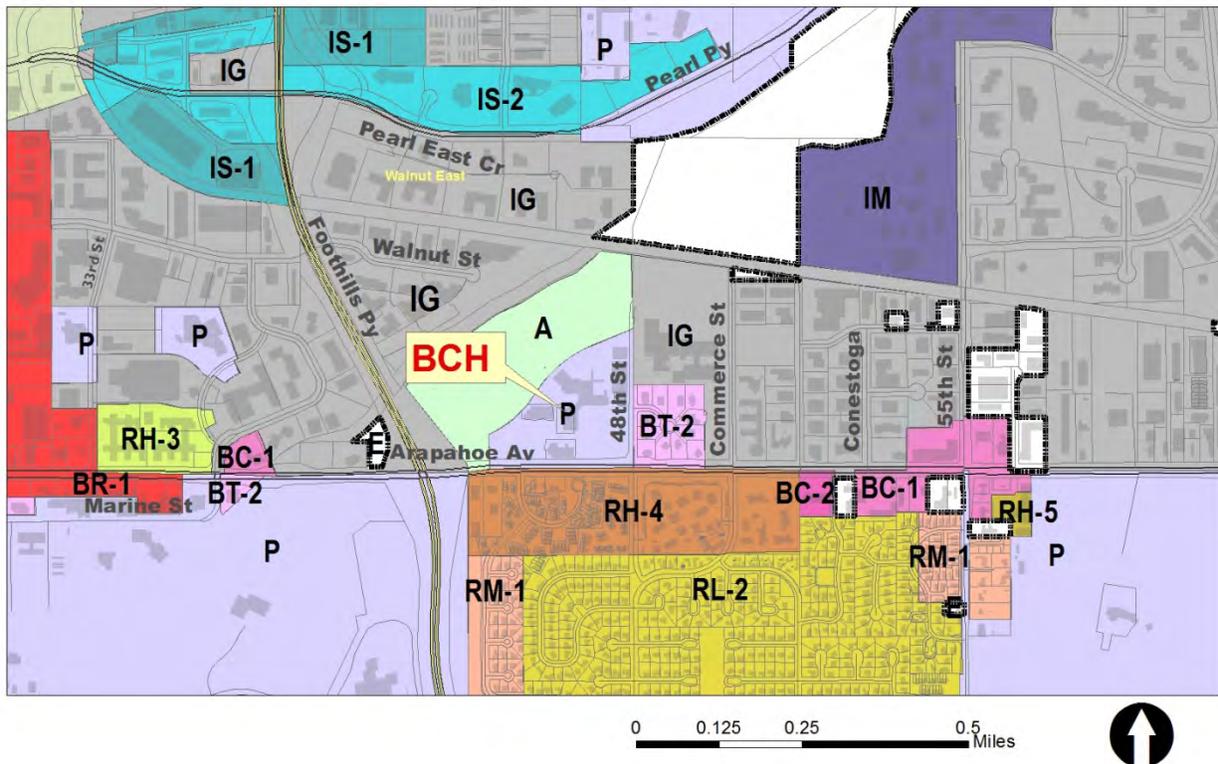


Figure 2: Existing Zoning

Two Phased Approach

Staff is proposing these targeted Title 9 changes to respond to short term medical clinic and office needs while narrowly addressing the issue in a limited area as a first phase of work. This approach builds on the discussions held in January and February 2015 with Planning Board and City Council, and reflects Planning Board’s action on Mar. 19, 2015.

1. This first phase and proposed ordinance includes an immediate modification to the IG zoning district to allow medical or dental clinics or offices and addiction recovery facilities as a conditional use in existing buildings and buildings with a submitted building permit application in close proximity to the hospital.
2. The second phase of work will look at Title 9 changes to address shifting medical related uses closer to BCH and comprehensively planning for and evaluating longer term land use, form, design, intensity, and potential redevelopment near BCH. Staff will work with the community, Planning Board, and council to plan for needs and evaluate options.

ANALYSIS

General Analysis

The proposed ordinance and conditional use process solves an immediate need by narrowly addressing the need for medical clinic and office uses in the vicinity of BCH. It applies to existing buildings, so it will cause limited change in built form. It does not allow new development of medical offices in the IG zoning district, so it has minimal impact on existing

neighborhoods and businesses. While the ordinance is narrow in scope, it is consistent with community goals because it:

1. Permits proximity of medical clinics and office uses near BCH for improved multimodal transportation and access, aiming to reduce single occupancy vehicle trips of patients and medical professionals between BCH and supportive offices;
2. Allows for uses that are compatible with the BVCP Light Industrial land use designation and IG zoning district uses, and does not change the zoning districts intended for service businesses (i.e., Industrial Service 1 and 2);
3. Supports a major community health institution by allowing supportive medical uses in the vicinity of BCH (BVCP Policy 8.10); and
4. Has minimal impact on traffic patterns or parking demands because of its limited scope.

Initially staff identified a study area including all properties within an approximately one mile distance from BCH along Arapahoe Ave. **Attachment C** contains a study conducted by Health Connect Properties to assess current medical office space near BCH and supply and demand based on the existing facility. Of note, medical office supply and demand are relatively aligned in the area; however there is no vacancy for medical offices within one-half mile of BCH. The study also confirms that limited square footage is available for medical office space, although a representative of 5495 Arapahoe has indicated there is space available in that building that may be suitable for medical office.

Specific Issues

1: Areas Where Medical Uses could be Allowed in IG Zoning District as Conditional Use

Figure 3 below shows the three possible areas where medical or dental clinic or office uses and addiction recovery facilities could be allowed in the IG zoning district as a conditional use as presented to Planning Board on Mar. 19, 2015. They are (A) Pearl East, (B) Walnut East/38th and Foothills Parkway, and (C) East of Ball Aerospace along Arapahoe Avenue.

Attachment B also provides an overview of each area and an inventory of properties, building space, prior city approvals related to office uses, businesses, and the source of the information. Other areas along East Arapahoe and 55th Street were analyzed and determined to be too distant from BCH or to lack available building space or compatible uses.

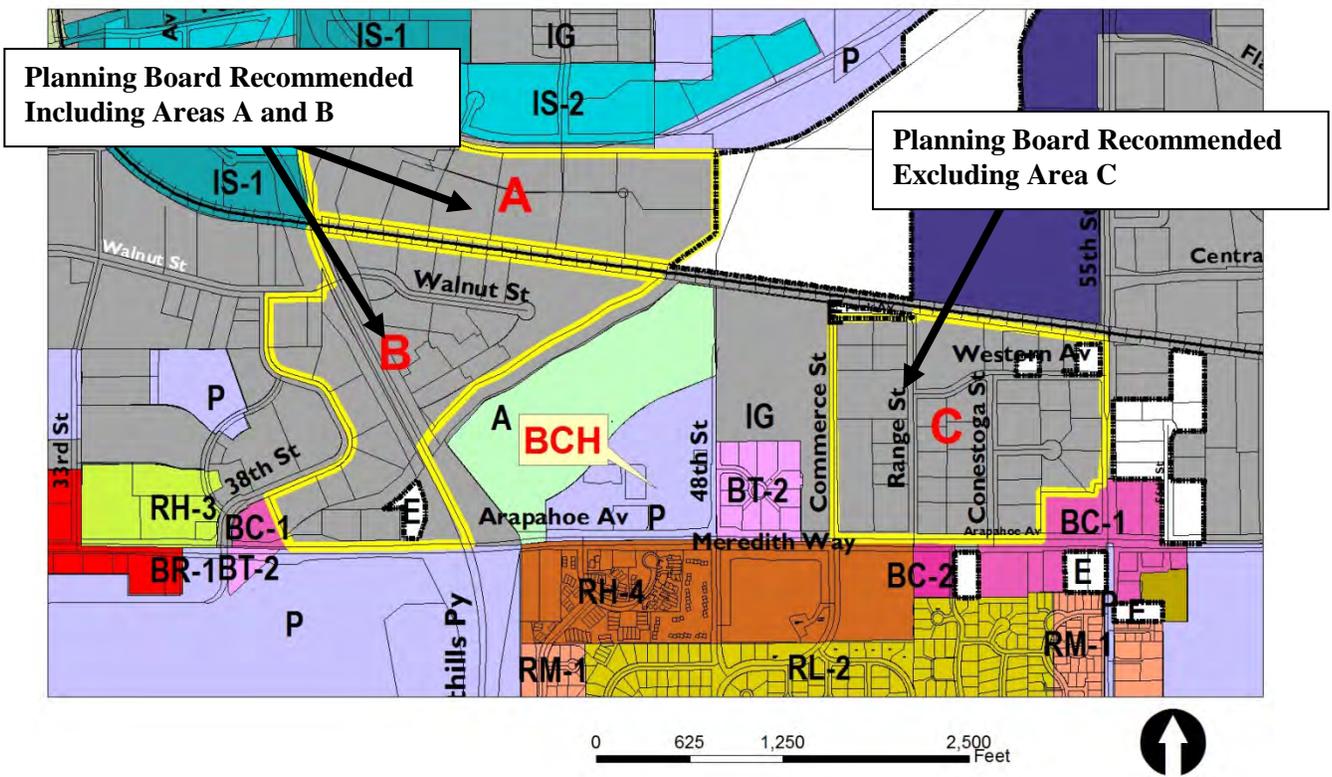


Figure 3: Possible Areas and properties within the IG zoning district where Medical or Dental Clinic or Office Uses or Addiction Recovery Facilities may be located in accordance with the draft ordinance and Planning Board’s feedback on March 19, 2015.

Area A: Pearl East

This area is 38 acres and contains 11 properties. It has 591,849 square feet of building space, with a vast majority in use for general office (81%) and the remainder as lodging (19%), as classified by Boulder County Assessor’s office (*Note: County classifications do not match Title 9 definitions for “office,” but give a general sense of the character of the land use mix within each area.*) Businesses such as Paychex, Genesis Biofuel, Outdoor Industry Association, Cloud 9 Living, and the US Social Security Administration are located in the area. Other implications of allowing medical clinics or office uses in this area include:

Proximity and Accessibility to BCH: This area is not particularly near or accessible to BCH.

- The average distance of properties from BCH on street is 1.4 miles.
- Walking distance is approximately 0.6 miles via the multi-use path.
- The 206 bus serves Pearl Parkway but does not have direct access to BCH, so travel time by bus is likely 20 minutes or more.

Compatibility with Existing Uses: Medical clinics and offices are compatible with the area. They would not likely displace manufacturing or service uses, given the existing mix of uses. Professional offices are allowed in most of this area. The city approved the Pearl East Business Park PUD in 1986 (P-86-49). This approval and subsequent amendments (e.g., UR-93-3) have allowed a variety of land uses (e.g., professional office) in addition to those currently allowed in the IG zoning district. 4700 Pearl, which sits on a former RTD park n ride site, is not part of the 1986 PUD.

Availability of Space: The area contains 35,619 square feet of available existing building space. 4700 Pearl awaits building permit approval and has 52,633 square feet of available space. Two medical practitioners have noted that the building could suit their needs.

Other Considerations: Past discussion has occurred regarding extending 48th Street across the railroad to connect with Pearl Street and improve overall circulation and access for the area. However, this kind of infrastructure investment would be long range, considerably costly, and necessitate analysis of environmental impacts.

Area B: Walnut East / 38th Street and Foothills Parkway

This area along Foothills Parkway is 62 acres and contains 32 properties. It has 730,551 square feet of building space. The mix of uses includes: general office (51%), industrial office (32%), warehouse and storage (11%), manufacturing (5%), and public/institutional (2%). Some of the businesses in the area include Mike's Motorcycle Parks, Shoyeido Fragrance, and Northwestern Mutual. Other implications of allowing medical clinics or office uses in this area include:

Proximity and Accessibility to BCH: The area is comparable in accessibility to Area A.

- The average distance of properties from BCH on street is 1.5 miles from the Walnut East area. Driving requires a somewhat indirect route via Exposition Drive and 38th Street.
- Walking distance is approximately 0.6 miles via the multi use path from the Walnut East area.
- The JUMP bus runs east and west along Arapahoe Avenue providing service to the properties near it; however the Walnut East area is not served by transit.

Compatibility with Existing Uses: Medical clinics and offices could be compatible with the mix of uses in the area which are about 50% general office and 30% industrial office. The Eastpark PUD allows professional office in most of the Walnut East area (see **Attachment B**). However, medical and dental offices are specifically prohibited on some properties within this PUD as they are in the IG zoning district. If Area B is included in the conditional use boundary, the city has a process to rescind the Eastpark PUD prohibition on medical and dental offices. About half of the properties included in Area B on the west side of Foothills Parkway (along 38th Street) have prior approvals for professional office, or in one case a chiropractic center.

Availability of Space: The area contains 84,002 square feet of available building space, all in the Walnut East area.

Other Considerations: The costs and benefits of extending 48th Street to Walnut East are being considered as part of the East Arapahoe area transportation planning. The capital cost would be considerable.

Area C: Area East of Ball Aerospace along Arapahoe Avenue

This area is 57 acres and contains 38 properties. It has 564,290 square feet of building space, much of which is leased by Ball Aerospace. The mix of uses includes: manufacturing (51%), industrial office (35%), warehouse and storage (7%), general office (3%), public/institutional (2%) and restaurants (1%). Some of the businesses in this area include Copy Experts, Capco

Tile and Stone, Blackbelly Restaurant, and Kare Products. Other implications of allowing medical clinics or office uses in this area include:

Proximity and Accessibility to BCH: The area is the most accessible to BCH.

- The average distance of properties from BCH on street is 0.5 miles.
- Walking distance is approximately 0.5 miles on sidewalks.
- The JUMP bus runs east and west along Arapahoe Avenue.

Compatibility with Existing Uses: Medical clinics and offices may be less compatible with the predominant manufacturing and industrial office use character of the area. Additionally, many of the buildings between Commerce and Conestoga Streets are leased by Ball Aerospace. Staff did not find any properties in this area with prior use approvals for professional, medical, or dental offices.

Availability of Space: The area does not currently contain available building spaces.

In the memo to Planning Board, staff recommended including Area C because of it's proximity to BCH.

2: Eligibility of Buildings with a Building Permit

For the Mar. 19 discussion with Planning Board, staff recommended that the ordinance would only apply to buildings existing on the lot or parcel on or before June 4, 2015. This was intended to prevent new development of medical buildings. However, as noted in the Pearl East area above, at least one building at 4700 Pearl Parkway has a pending building permit, and the building may be suitable to accommodate medical office needs. While the location is not ideal from a proximity or accessibility standpoint, building space near BCH is very limited and vacancy rates in all the areas are very low.

Planning Board recommended that the ordinance be expanded to include buildings for which a building permit for new construction was submitted on the lot or parcel on or before June 4, 2015. To further the goal of preventing new development of medical buildings, staff is recommending that the June 4, 2015 date be replaced with the first reading date of April 7, 2015.

PHASE 2 - BCH DISTRICT PLANNING AND IMPLEMENTATION

The proposed ordinance and Title 9 changes proposed as part of this agenda item are limited in scope and effect. Therefore, staff will continue to work with the Boulder community, Planning Board, City Council, and stakeholders to plan for the future needs and character near BCH and identify the best zoning approach to implement the desired future district.

Phase 2 is completion is targeted for early to mid-2016. Phase 2-specific considerations and scope items are anticipated to include:

1. Develop a community engagement strategy to include neighbors, property owners, tenants and other people interested in participating. Coordinate with Boulder Community Health and Ball Aerospace.
2. Define a more focused planning area for the future "hospital district" – possibly around Riverbend Park and the BT-2 zoning district.
3. Synchronize with the Boulder Valley Comprehensive Plan (BVCP) 2015 update process to plan for hospital district needs and desired character of future redevelopment.
4. Continue to analyze potential transportation connections in the immediate area, such as 48th Street extension and future Bus Rapid Transit along SH 7/Arapahoe Ave.

5. Begin drafting Title 9 changes, including a possible new zoning district or form based code to implement the hospital district desired form, uses, and character.

NEXT STEPS

The following immediate next steps are proposed:

- **May 5, 2015:** City Council 2nd reading of proposed ordinance amending Title 9.
- **Jul. 16, 2015:** Planning Board discussion of Phase 2 planning issues for BCH and zoning district options.
- Check ins with council on Phase 2 will be coordinated with the BVCP update and council calendar.

ATTACHMENTS:

- A. Proposed Ordinance Amending Title 9, "Land Use Code," B.R.C. 1981.
- B. Area Profiles and Property Inventory
- C. Medical Office Analysis/Boulder Community Health
- D. Draft Minutes from March 19, 2015 Planning Board Meeting

Link: [Area II Analysis Report \(2013\)](#)

ORDINANCE NO. 8040

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, TO ALLOW MEDICAL OR DENTAL CLINICS OR OFFICES AND ADDICTION RECOVERY FACILITIES AS A CONDITIONAL USE IN THE INDUSTRIAL GENERAL ZONING DISTRICT IN CLOSE PROXIMITY TO THE BOULDER COMMUNITY HEALTH FOOTHILLS CAMPUS, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 9-2-1, B.R.C. 1981, is amended to read:

9-2-1. - Types of Reviews.

- (a) Purpose: This section identifies the numerous types of administrative and development review processes and procedures. The review process for each of the major review types is summarized in Table 2-1 of this section.
- (b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

I. ADMINISTRATIVE REVIEWS	II. ADMINISTRATIVE REVIEWS - CONDITIONAL USES	III. DEVELOPMENT REVIEW AND BOARD ACTION
Building permits	Accessory Units (Dwelling, Owners, Limited)	Annexation/initial zoning
Change of address	Antennas for Wireless	BOZA variances
Change of street name	Telecommunications Services	Concept plans
Demolition, moving, and removal of buildings with no historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation, and Off-Site Relocation	Bed and Breakfasts	Demolition, moving, and removal of buildings with potential historic or architectural significance, per Section 9-11-23, "Review of Permits for Demolition, On-Site Relocation,
	Cooperative Housing Units	
	Daycare Centers	

1	of Buildings Not Designated,"	Detached Dwelling Units with	and Off-Site Relocation of
2	B.R.C. 1981	Two Kitchens	Buildings Not Designated,"
3	Easement vacation	Drive-Thru Uses	B.R.C. 1981
4	Extension of development	Group Home Facilities	Landmark alteration certificates
5	approval/staff level	Home Occupations	other than those that may be
6	Landmark alteration certificates	Manufacturing Uses with Off-	approved by staff per Section 9-
7	(staff review per Section 9-11-14,	Site Impacts	11-14, "Staff Review of
8	"Staff Review of Application for		Application for Landmark
9	Landmark Alteration Certificate,"		Alteration Certificate," B.R.C.
10	B.R.C. 1981)		1981
11	Landscape standards variance	<u>Medical or Dental Clinics or</u>	Lot line adjustments
12	Minor modification	<u>Offices or Addiction Recovery</u>	Lot line elimination
13	Nonconforming use (extension,	<u>Facilities in the Industrial</u>	Minor Subdivisions
14	change of use (inc. parking))	<u>General Zoning District near the</u>	Out of city utility permit
15	Parking deferral per Subsection 9-	<u>Boulder Community Health</u>	Rezoning
16	9-6(e), B.R.C. 1981	<u>Foothills Campus</u>	Site review
17	Parking reduction of up to fifty	Neighborhood Service Centers	Subdivisions
18	percent per Subsection 9-9-6(f),	Offices, Computer Design and	Use review
19	B.R.C. 1981	Development, Data Processing,	Vacations of street, alley, or
20	Parking reductions and	Telecommunications, Medical or	access easement
21	modifications for bicycle parking	Dental Clinics and Offices, or	
22	per Paragraph 9-9-6(g)(6), B.R.C.	Addiction Recovery Facilities in	
23	1981	the Service Commercial Zoning	
24	Parking stall variances	Districts	
25	Public utility	Recycling Facilities	
		Religious Assemblies	
		Residential Care, Custodial Care,	
		and Congregate Care Facilities	
		Residential Development in	
		Industrial Zoning Districts	
		Restaurants, Brewpubs, and	
		Taverns	

1	Setback variance	Sales or Rental of Vehicles on	
2	Site access variance	Lots Located 500 Feet or Less	
3	Solar exception	from a Residential Zoning	
4	Zoning verification	District	
5		Service Stations	
6		Shelters (Day, Emergency,	
7		Overnight, temporary)	
8		Temporary Sales	
9		Transitional Housing	

...

Section 2. Section 9-6-1, B.R.C. 1981, is amended to read:

9-6-1. - Schedule of Permitted Land Uses.

The schedule shows the uses which are permitted, conditionally permitted, prohibited, or which may be permitted through use review pursuant to Section 9-2-15, "Use Review," B.R.C. 1981.

(a) Explanation of Table Abbreviations: The abbreviations used in Table 6-1 of this section have the following meanings:

- (1) Allowed Uses: An "A" in a cell indicates that the use type is permitted by right in the respective zoning district. Permitted uses are subject to all other applicable regulations of this title.
- (2) Conditional Uses: A "C" in a cell indicates that the use type will be reviewed in accordance with the procedures established in Section 9-2-2, "Administrative Review Procedures," B.R.C. 1981. Conditional use applications shall also meet the additional standards set forth in Sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards," or other sections of this title.
- (3) Use Review Uses: A "U" in a cell indicates that the use type will be reviewed in accordance with the procedures established in Section 9-2-15, "Use Review," B.R.C. 1981. Use review applications shall also meet the additional standards set forth in Sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards."
- (4) Ground Floor Restricted Uses: A "G" in a cell indicates that the use type is permitted by right in the respective zoning district, so long as it is located above or below the ground floor, otherwise by use review only.
- (5) Residential Restricted Uses - M: An "M" in a cell indicates the use is permitted, provided at least fifty percent of the floor area is for residential use and the

1 nonresidential use is less than seven thousand square feet per building, otherwise by use
2 review only.

3 (6) Residential Restricted Uses - N: An "N" in a cell indicates the use is permitted,
4 provided at least fifty percent of the floor area is for nonresidential use, otherwise by
5 use review only.

6 (7) Prohibited Uses: An asterisk symbol ("*") in a cell indicates that the use type is
7 prohibited in the zoning district.

8 (8) Additional Regulations: There may be additional regulations that are applicable to a
9 specific use type. The existence of these specific use regulations is noted through a
10 reference in the last column of the use table entitled "Specific Use." References refer to
11 subsections of Sections 9-6-2 through 9-6-9, B.R.C. 1981, for "Specific Use Standards,"
12 or other sections of this title. Such standards apply to all districts unless otherwise
13 specified.

14 (9) n/a: Not applicable; more specific use applications apply.

15 (b) Interpretation: The city manager may decide questions of interpretation as to which category
16 uses not specifically listed are properly assigned to, based on precedents, similar situations,
17 and relative impacts. Upon written application, the BOZA may determine whether a specific
18 use not listed in Table 6-1 of this section is included in a specific use category. Any use not
19 specifically listed in Table 6-1 of this section is not allowed unless it is determined to be
20 included in a use category as provided by this section.

21 (c) Multiple Uses of Land Permitted: Permitted uses, conditional uses, and uses permitted by
22 use review may be located in the same building or upon the same lot.

23 (d) Use Table:
24
25

TABLE 6-1: USE TABLE

Zoning District	RR-1, RR-2, RE, RL-1	RL-2, RM-2	RM-1, RM-3	RM X-1	RM X-2	RH-1, RH-2, RH-4, RH-5	RH-3, RH-7	RH-6	MH	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BS	BC-1, BC-2	BS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2, DT-3	IS-1, IS-2	IG	IM	IMS	P	A	
Use Modules	R1	R2	R3	R4	R5	R6	R7	R8	MH	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I1	I2	I3	I4	P	A	Specific Use Standard
Office, Medical and Financial Uses																												
Data processing facilities	*	*	*	*	*	*	*	*	*	*	*	*	C	A	G	A	C	A	G	A	A	*	A	A	A	*	*	9-6-7
Financial institutions	*	*	*	*	*	*	M	*	*	M	MM	C	U	A	A	A	A	A	A	A	A	*	*	*	*	*	*	
Hospitals	*	*	*	*	*	*	*	*	*	*	***			*	*	*	*	*	*	*	*	*	*	*	*	A	*	9-3-2(i)
Medical or dental clinics or offices or addiction recovery	*	U	U	U	*	U	U	*	*	M	U	U	C	A	A	A	C	A	G	A	A	*	<u>C</u>	*	*	U	*	9-3-2(i) 9-6-7

1 U: Use review. See Section 9-2-15 for use review procedures.

2 G: Allowed use provided that it is located above or below the ground floor.

3 M: Allowed use provided at least 50% of the floor area is for residential use and the nonresidential use is less than 7,000 square feet per building, otherwise use review.

4 N: Allowed use provided at least 50% of the floor area is for nonresidential use, otherwise by use review.

5 n/a: Not applicable; more specific use applications apply.

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1 Section 3. Section 9-6-7, B.R.C. 1981, is amended to read:

2 **9-6-7. - Office, Medical and Financial Uses.**

3 Offices, Computer Design and Development, Data Processing, Telecommunications, Medical or
4 Dental Clinics and Offices, Medical and Dental Laboratories, Financial Institutions, or Addiction
5 Recovery Facilities: The following criteria apply to the uses and zoning districts specified in this
6 subsection:

7 (1) In the BCS zoning district, the combined total amount of any office, computer design
8 and development facility, data processing facility, telecommunication use, medical or
9 dental clinic or office, or addiction recovery facility shall not exceed fifty percent of the
10 total floor area of the building.

11 (2) In the MU-4 zoning district, any public and private office use providing social services;
12 data processing facility; financial institution; medical or dental clinic or office;
13 addiction recovery facility; medical and dental laboratory; office, administrative; office,
14 professional; and office, other, shall not exceed 20,000 square feet in floor area of the
15 building. The floor area may exceed 20,000 square feet if the use is approved pursuant
16 to a use review and the approving authority finds that the use:

17 (A) Meets the use review criteria in Paragraphs 9-2-15(e)(1), (3), (4), and (5), "Use
18 Review," B.R.C. 1981; and

19 (B) The proposed use will contribute to a diversity of uses in the area and to making the
20 area a lively and engaging place.

21 (3) In the IG zoning district, the following standards and criteria apply to any medical or
22 dental clinics or offices and any addiction recovery facilities:

23 (A) The use must be located on a lot or parcel designated in Appendix K, "Properties
24 Where Medical or Dental Clinics or Offices and Addiction Recovery Facilities
25 May Be Located as Conditional Uses in the IG Zoning District;"

 (B) The use must be located in a building existing on the lot or parcel with a certificate
 of occupancy on or before April 7, 2015, or in a building for which a building
 permit application for new construction on the lot or parcel was submitted on or
 before April 7, 2015; and

 (C) Any changes to the building for the medical or dental clinic or office use or
 addiction recovery facility use shall not result in a cumulative total increase in
 floor area of more than ten percent of the floor area of the building existing on
 April 7, 2015, or shown in the building permit application submitted on or before
 April 7, 2015, as applicable.

1 Section 4. The council adopts Attachment A, titled, “Appendix K, Properties Where
2 Medical or Dental Clinics or Offices and Addiction Recovery Facilities May Be Located as
3 Conditional Uses in the IG Zoning District,” as an amendment to Title 9, “Land Use Code,”
4 B.R.C. 1981.

5
6 Section 5. This ordinance is necessary to protect the public health, safety, and welfare of
7 the residents of the city, and covers matters of local concern.

8 Section 6. The city council deems it appropriate that this ordinance be published by title
9 only and orders that copies of this ordinance be made available in the office of the city clerk for
10 public inspection and acquisition.

11
12 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
13 TITLE ONLY this ____ day of _____, 2015.

14
15
16 _____
Mayor

17 Attest:

18
19 _____
City Clerk

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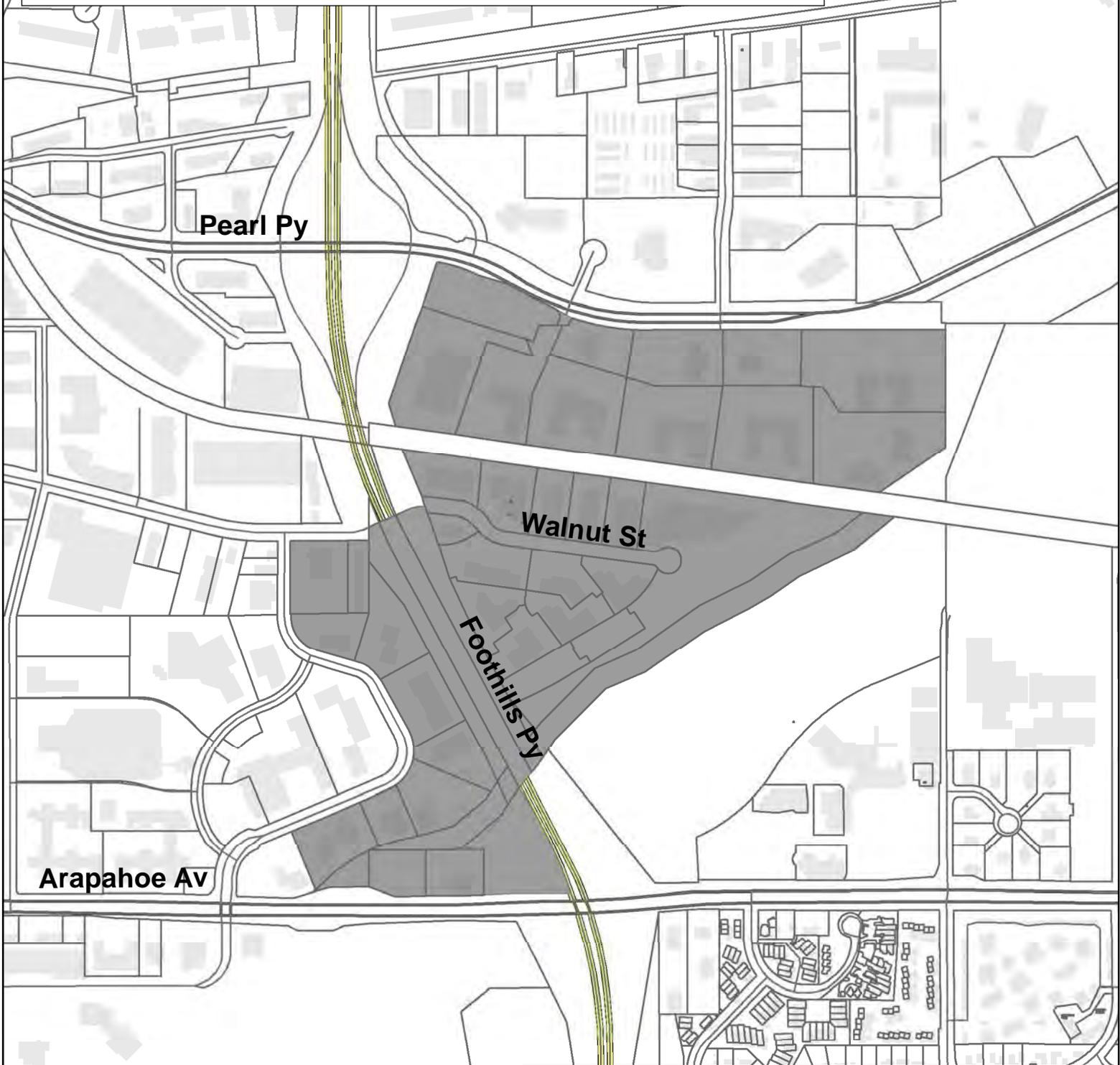
READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 2015.

Mayor

Attest:

City Clerk

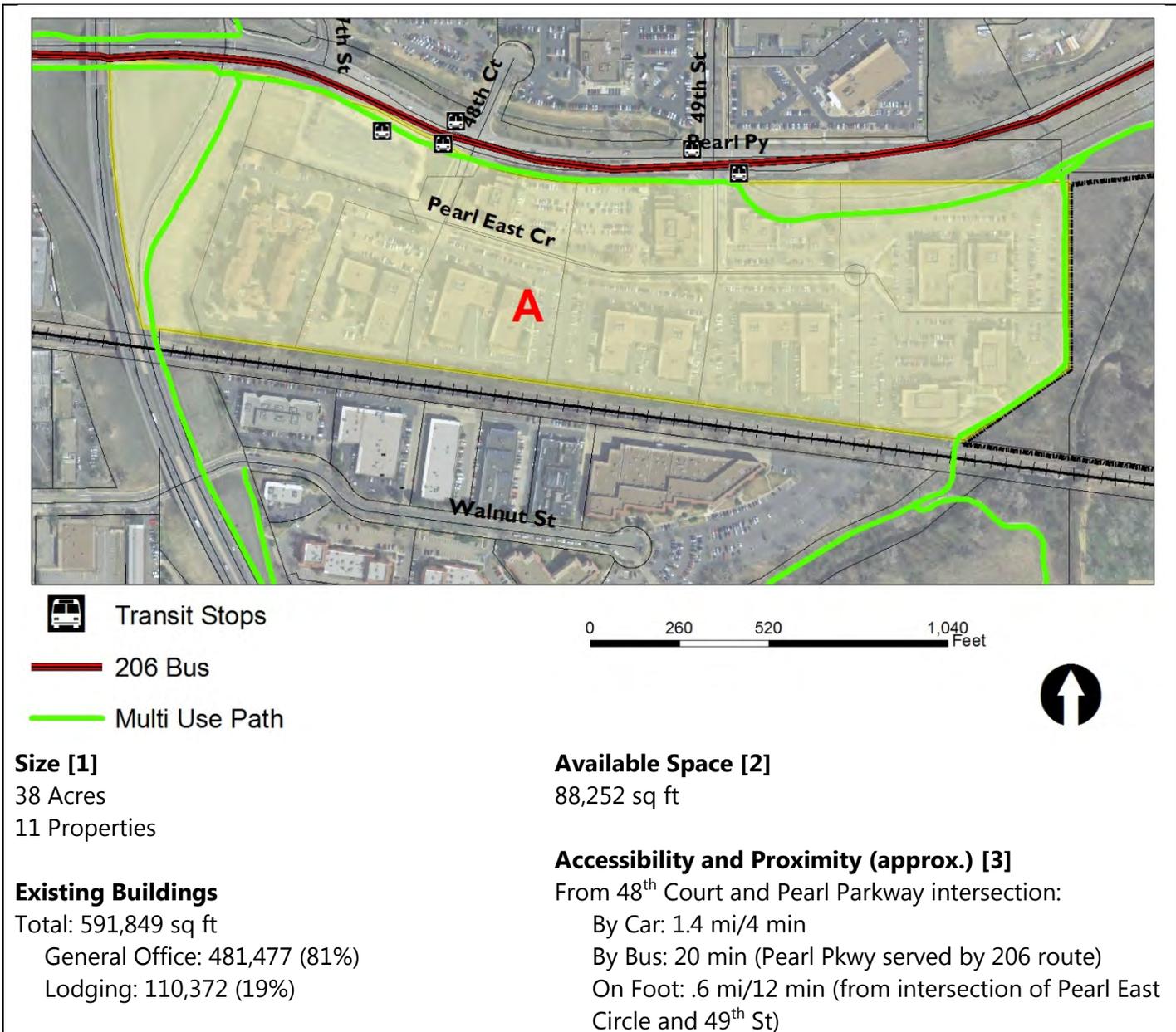
Appendix K: Properties Where Medical or Dental Clinics or Offices and Addiction Recovery Facilities May be Located as Conditional Uses in the IG Zoning District

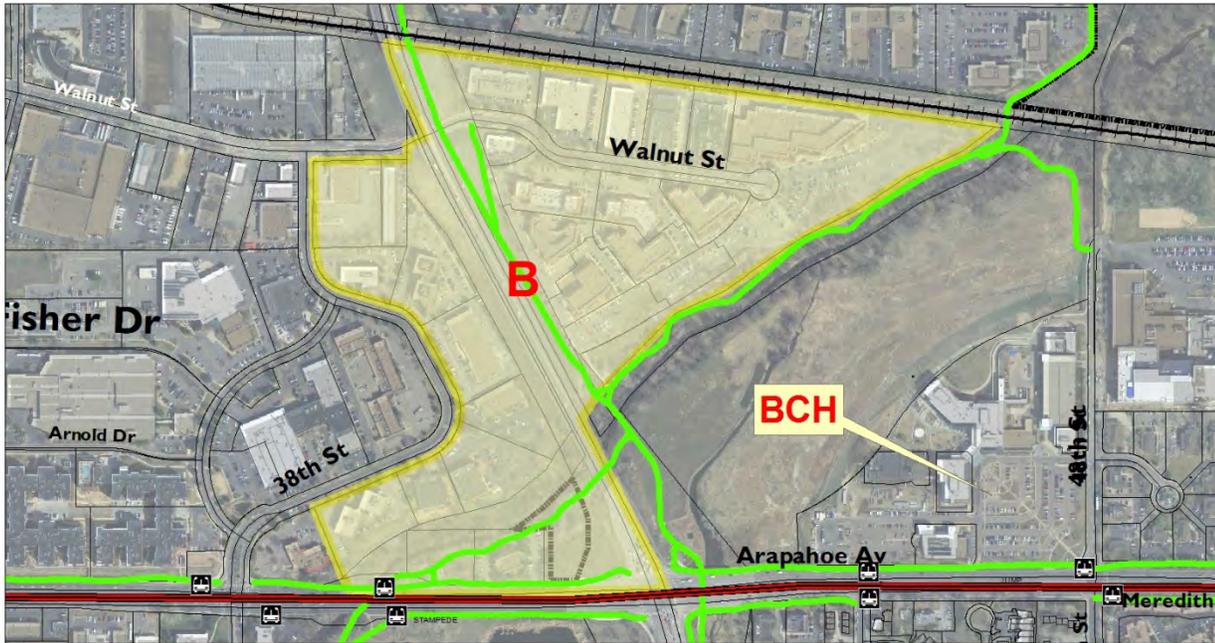


Legend

-  Ownership Parcels
-  Medical or Dental Clinics or Offices and Addiction Recovery Facilities Allowed

ATTACHMENT B: AREA PROFILES AND PROPERTY INVENTORY





-  Transit Stops
-  JUMP Bus
-  Multi Use Path



Size [1]

62 Acres
32 Properties

Existing Buildings

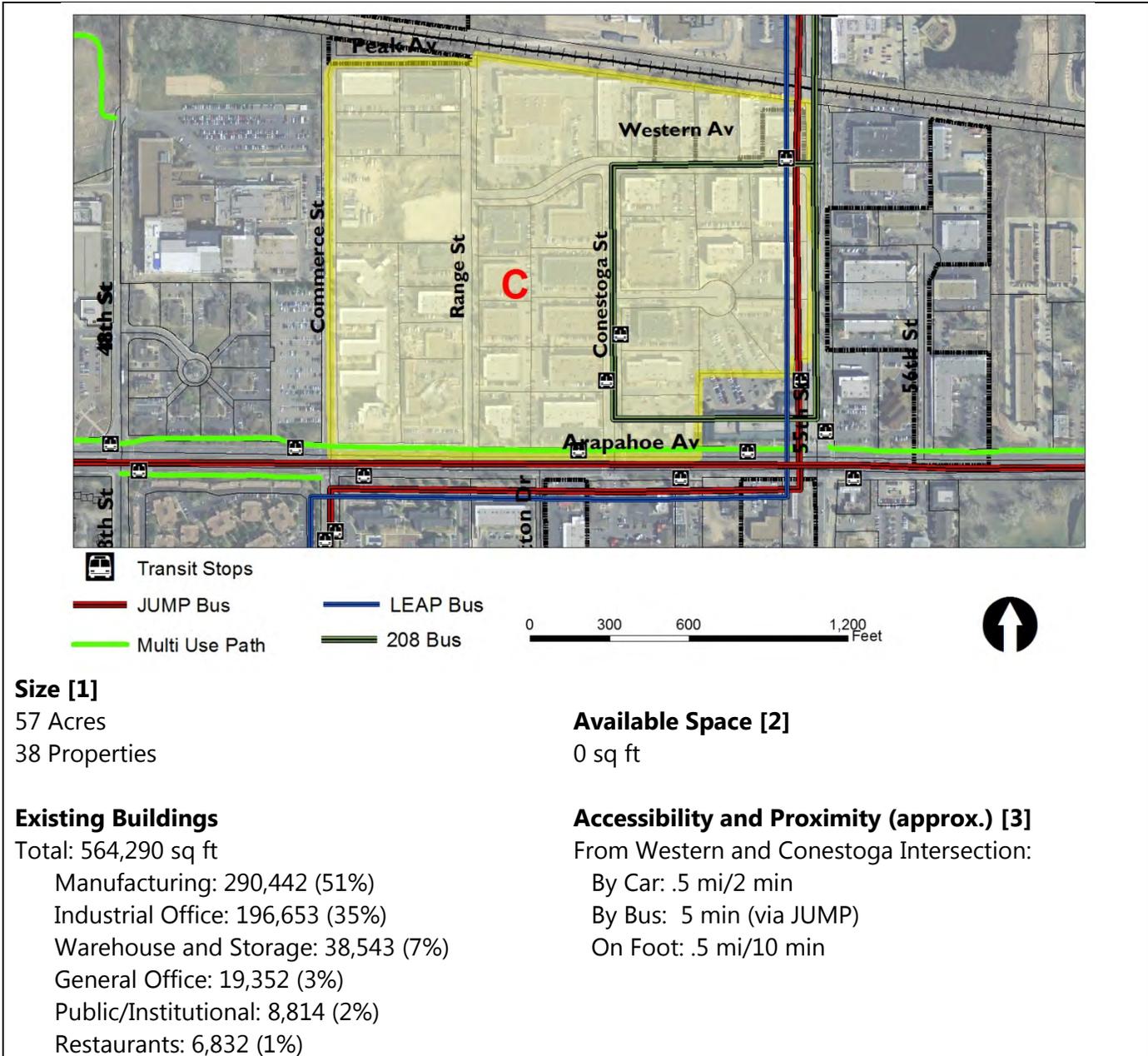
Total: 730,551 sq ft
 General Office: 370,319 (51%)
 Industrial Office: 236,357 (32%)
 Warehouse and Storage: 78,466 (11%)
 Manufacturing: 33,903 (5%)
 Public/Institutional: 11,506 (2%)

Available Space [2]

84,002 sq ft (all in Walnut St area east of Foothills)

Accessibility and Proximity (approx.) [3]

From Walnut St east of Foothills cul-de-sac:
 By Car: 1.5 mi/5 min
 By Bus: 5 min (via JUMP)
 On Foot: .6 mi/12 min



Sources: Co Star, Boulder County Assessors

[1] Does not include rights-of-way and open space properties

[2] Taken from Co Star search in February 2015. This number includes all spaces within the related boundaries that are classified as office, flex, retail, or industrial space. Not all spaces may be suitable for medical office.

[3] Source: Google Maps, analysis done for 1:00 on a weekday

Property Inventory



Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
1800 38th 	Unknown at this time	17,464 sq ft, Offices
1780 38th 	Northwestern Mutual	62,728 sq ft, Industrial Office
1730 38th 	Mike's Motorcycle Parts	35,046 sq ft, Industrial Office
1700 38th 	Shoyeido Fragrance	<ul style="list-style-type: none"> • 14,113 sq ft, Offices • SR-93-15 –allows approx. 6,000 sq ft of the 13,000 sq ft building for professional office, up to approx. 900 sq ft for accessory retail
1690 38th 	Unknown at this time	<ul style="list-style-type: none"> • 23,964 sq ft, Industrial Office • Allows professional offices and a variety of retail (sporting goods, hobby shops, hardware stores, etc.) (part of Eastpark PUD)
1680 38th 	Unknown at this time	<ul style="list-style-type: none"> • 25,925 sq ft, Manufacturing/Processing Improvements • SR-78-30– office building (part of Eastpark PUD)

38th and Arapahoe		
Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
1650 38th 	Unknown at this time	<ul style="list-style-type: none"> • 27,516 sq ft, Offices • UR-94-23 – approved use review for chiropractic center
4141 Arapahoe 	Unknown at this time	<ul style="list-style-type: none"> • 14,194 sq ft, Offices • SR-80-14 – professional office approved; medical and dental offices specifically excluded (if medical office becomes allowed, the property has the option to rescind prior approvals or prohibitions with the code change, which is an administrative process)
1860 38th St 	Unknown at this time	14,425 sq ft, Warehouse/Storage
3900 Walnut 	Pete's Garage Breggos	11,680 sq ft, Warehouse/Storage

48 th and Pearl Pkwy		
Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
4700 Pearl Pkwy 	Former RTD park and ride, currently vacant	No existing building *52,443 sq ft currently available
4710 Pearl East Cir 	Marriot Hotel	<ul style="list-style-type: none"> Hotel, 110,372 sq ft P-86-49, H-86-8, SR-86-22, P-85-41, P-86-49 – prior approvals for hotel and ancillary, related uses
4845 Pearl East Cir 	Professional Offices Project Back to Work Paychex North America Genesis Biofuel Ascent Processing Insurance offices	32,112 sq ft, Offices
4875 Pearl East Cir 		<ul style="list-style-type: none"> 66,800 sq ft, Offices Pearl East Business Park PUD allows professional office on this property
4909 Pearl East Cir 	Outdoor Industry Association Tide Corporation	24,135 sq ft, Offices
4949 Pearl East Cir 	Cloud 9 Living US Social Security Administration	57,252 sq ft, Offices * 6,500 sq feet currently available

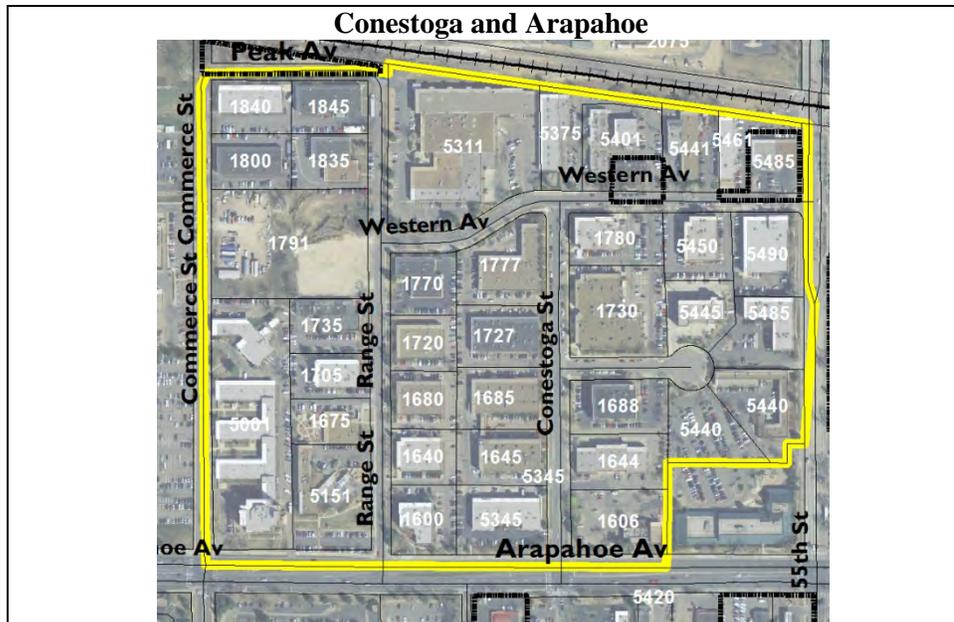
48th and Pearl Pkwy

Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
4780 Pearl East Cir 	LogRhythm	32,402 sq ft, Offices
4840 Pearl East Cir 	University of Colorado offices	<ul style="list-style-type: none"> • 62,400 sq ft, Offices • *17,700 sq feet currently available • H-88-7 – allows professional office
4888 Pearl East Cir 	Unknown at this time	<ul style="list-style-type: none"> • 60,000 sq ft, Offices • *10,498 sq feet currently available • H-88-7 – allows professional office
4900 Pearl East Cir 	Unknown at this time	<ul style="list-style-type: none"> • 67,200 sq ft, Offices • SI-93-13 – allows professional office
4940 Pearl East Cir 	Unknown at this time	<ul style="list-style-type: none"> • 79,176 sq ft, Offices • *11,388 sq feet currently available • SI-93-13 – allows professional office

Walnut Street East of Foothills		
Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
4725 Walnut 	Spyder Sports	26,043 sq ft, Offices
4735 Walnut 	Unknown at this time	5,997 sq ft, Commercial Condo
4745 Walnut 	Abos Pizza Montessori of the Rockies Thanasi Foods	20,445 sq ft, Manufacturing/Processing
4755 Walnut 	Eco Products	20,292 sq ft, Industrial Office
4765 Walnut 	Amgen	28,242 sq ft, Industrial Office

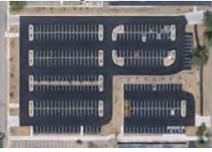
Walnut Street East of Foothills		
Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
4775 Walnut 	Resolve Funding Foraker Labs Knowledge Factor	<ul style="list-style-type: none"> • 101,130 sq ft, Industrial Office • Eastpark III PUD – allows office uses, on this property, except for medical or dental offices (if medical office becomes allowed, the property has the option to rescind prior approvals or prohibitions with the code change, which is an administrative process)
4700 Walnut 	Broadcast Association/KGNU Radio	<ul style="list-style-type: none"> • 5,952 sq ft, Nonprofit • P-76-25, SR-82-5, P-82-18 – Eastpark PUD, allows “office uses” on this property, except for medical or dental offices
4720 Walnut 	Pure Energy Solutions	<ul style="list-style-type: none"> • 28,101 sq ft, Offices • Eastpark III PUD – allows “office uses” on this property, except for medical or dental offices
4760 Walnut 	Minute Key Vital Network Solutions	<ul style="list-style-type: none"> • 20,491 sq ft, Offices • Eastpark III PUD – allows “office uses” on this property, except for medical or dental offices
4772 Walnut 	Confio Software	<ul style="list-style-type: none"> • 45,488 sq ft, Offices • Eastpark III PUD – allows “office uses” on this property, except for medical or dental offices
4730 Walnut 	Dell Software Boulder Vision Optik Sketch Up Slipstream Sports	<ul style="list-style-type: none"> • 31,261 sq ft, Offices • Eastpark III PUD – allows “office uses” on this property, except for medical or dental offices

Walnut Street East of Foothills		
Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
4740 Walnut 	University of Colorado Foundation	<ul style="list-style-type: none"> 65,498 sq ft, Offices Eastpark III PUD – allows “office uses” on this property, except for medical or dental offices
4750 Walnut 	Space Science Institute	<ul style="list-style-type: none"> 45,524 sq ft, Offices Eastpark III PUD – allows “office uses” on this property, except for medical or dental offices
4746 Walnut		Special Purpose (parking area)
4754 Walnut		



Address/Images	Examples of Existing Businesses	Building Size and County Classification, Prior City Approvals
5001 Arapahoe 	Ball Aerospace	<ul style="list-style-type: none"> 60,954 sq ft, Industrial Office Planning Board approved site review (7-10-97) that includes administration, offices, lab facilities and parking areas for Ball Aerospace
1800 Commerce 	Whitten Design Group	14,913 sq ft, Industrial Condos
1840 Commerce 	Unknown at this time	15,200 sq ft, Warehouse
5151 Arapahoe 	Dog Spot	<ul style="list-style-type: none"> 23,343 sq ft, Warehouse UR-97-2 approved for industrial office (Ball Aerospace), with office use not to exceed 4,850 sq ft
1675 Range 	Center for People With Disabilities	8,814 sq ft, Ex Charitable Non-Res IMPS
1705 Range 	Unknown at this time	20,804 sq ft, Manufacturing

Attachment B - Area Profiles and Property Inventory

<p>1735 Range</p> 	<p>Ball Aerospace</p>	<p>12,800 sq ft, Manufacturing</p>
<p>1791 Range</p> 	<p>Ball Employee Parking</p>	<p>No existing buildings</p>
<p>1835 Range</p> 	<p>Unknown at this time</p>	<p>14,320 sq ft, Manufacturing</p>
<p>1845 Range</p> 	<p>Evol Foods</p>	<p>15,200 sq ft, Manufacturing</p>
<p>1600 Range</p> 	<p>Boulder Digital Arts Blue Canyon Technologies</p>	<p>21,170 sq ft, Industrial Office</p>
<p>1640 Range</p> 	<p>Unknown at this time</p>	<p>13,218 sq ft, Manufacturing</p>
<p>1680 Range</p> 	<p>Ball Aerospace</p>	<p>13,458 sq ft, Manufacturing</p>
<p>1720 Range</p> 	<p>Unknown at this time</p>	<p>13,458 sq ft, Manufacturing</p>
<p>1770 Range</p> 	<p>Unknown at this time</p>	<p>12,063 sq ft, Manufacturing</p>
<p>5311 Western</p> 	<p>Rocky Mountain Theater for Kids Boulder Mary Williams Fine Arts Brewing Market Corporate Office Roundhouse Spirits Distillery</p>	<p>79,983 sq ft, Manufacturing</p>

Attachment B - Area Profiles and Property Inventory

<p>5375 Western</p> 	<p>Unknown at this time</p>	<p>17,152 sq ft, Manufacturing</p>
<p>5401 Western</p> 	<p>Chematox Laboratory Kutandra Center Crescent Moon Snowshoes and Poles</p>	<p>15,396, sq ft, Manufacturing</p>
<p>5421 Western</p> 	<p>Conscious Coffees</p>	<p>Unknown at this time</p>
<p>5441 Western</p> 	<p>Unknown at this time</p>	<p>14,000 sq ft, Industrial Office</p>
<p>5461 Western</p> 	<p>Falafel King Restaurants BolderAuto</p>	<p>9,182, Manufacturing</p>
<p>5345 Arapahoe</p> 	<p>Professional office Copy Experts Bridge House Van Education Center Seth Ellis Chocolatier CAPCO Tile & Stone Inlighten Studios Caruso Kitchens and Design</p>	<p>23,006 sq ft, Commercial Condo</p>
<p>1645 Conestoga</p> 	<p>Ball</p>	<p>26,989 sq ft, Manufacturing</p>
<p>1685 Conestoga</p> 	<p>Unknown at this time</p>	<p>21,112 sq ft, Manufacturing</p>
<p>1727 Conestoga</p> 	<p>Ball</p>	<ul style="list-style-type: none"> • 21,112 sq ft, Manufacturing • SR-79 – approval for one dwelling unit in addition to underlying uses allowed by zoning

Attachment B - Area Profiles and Property Inventory

1777 Conestoga 	Unknown at this time	23,718 sq ft, Industrial Office
1606 Conestoga St 	Quiznos Dizzy's Donuts Blackbelly Restaurant Jamba Juice	<ul style="list-style-type: none"> • 6,832 sq ft, Restaurants • ADR2000-00131 – approved minor modification to Arapahoe East Center PUD to allow additional restaurant (initially approved for just one restaurant)
1644 Conestoga St 	Minuteman Press Pro Photo Rental, Inc Hudgels Carpets Kare Products	15,900 sq ft, Industrial Office
1688 Conestoga 	Unknown at this time	25,925 sq ft, Manufacturing
5440 Conestoga Ct 	Family Bakery and Café House of Motorrad Wild Woods Brewery Royal Distribution Inc	19,004 sq ft, Industrial Office
5485 Conestoga Ct 	Filthy Motorsports Eco Vessel Theatrical Costumes Annex	25,269 sq ft, Commercial Condo
5445 Conestoga Ct 	Unknown at this time	17,956 sq ft, Industrial Office
1730 Conestoga 	Unknown at this time	35,046 sq ft, Industrial Office
1780 Conestoga 	Unknown at this time	62,728 sq ft, Industrial Office
5450 Western 	Daily Camera Colorado Daily Second Story Garage Prairie Mountain Publishing	25,432 sq ft, Industrial Office

Attachment B - Area Profiles and Property Inventory

5490 Western 	Unknown at this time	24,407 sq ft, Manufacturing
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Medical Office Analysis



Boulder Community Health



Presented by



Patricia M. Wassik, CCIM, CPM
Cyndi Stringham, CCIM

February 25, 2015

East Arapahoe Medical Office Analysis Needs

City of Boulder

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- II. Case Studies**
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 - B. Hospital Bed Analysis**
 - C. Foothills Medical Campus Map**
- V. Health Connect Properties Biographies**



City of Boulder - East Arapahoe Medical Office Analysis Needs

I. Analysis

- A. Definition of medical office: (source: CoStar) a special purpose, multi- or single-tenant facility, with more than 50% of the demised space suitable for medical uses such as general practice, dental, surgical or other practices utilizing interior improvements not generally found in business support facilities are known as medical properties. Prominent physical characteristics include a greater number of wet stacks (plumbing) and special power requirements used for laboratory testing and other medical procedures common in doctors' offices. A notably high parking ratio usually accompanies the space.

For the purpose of this report, we have defined medical office buildings as an office building (or office condominium building) occupied by 50% or more of medical tenants.

- B. Common Needs: Boulder Community Health is a regional Hospital servicing the City of Boulder. Due to Boulder's unique community which is somewhat isolated from the main Denver metro area, the population in Boulder benefits from medical services that are located within the City of Boulder as opposed to a service area defined by a radius or drive time.

Based on our experience and knowledge of healthcare real estate, medical offices within a half mile of a Hospital is most convenient for physicians commuting between office visits and surgery or any direct Hospital purposes. Patients can also easily navigate to medical offices near a Hospital because of familiarity and convenience. Direct visibility from a main road is not necessary but easy accessibility is essential. A medical office building has a greater number of visitors and demand of ADA amenities than a general office space. A parking ratio of 5 spaces per 1,000 SF of medical office space is ideal. A standard medical office suite is 1,000-1,200 SF per physician and/or provider (which includes physician assistants and nurse practitioners).

- C. North Broadway Campus Existing Medical Office: Within a half mile radius of 1100 Balsam, there are several medical office buildings consisting of 130,734 SF of space. There is one vacancy of 3,221 SF, resulting in a vacancy rate of 2.46%.
- D. Foothills Campus Existing Medical Office: Within a half mile radius of 4747 Arapahoe, the medical office buildings consist of 257,954 SF of space. These are the Table Mesa Medical Building, Foothills Medical Building, Anderson Medical Center, and a number of small buildings in the Riverbend Office Park. The Tebo Family Medical Building is a 42,000 Cancer Treatment Center, which is not included as medical office space because of the Hospital provided service to acute care patients, which is an extension of the Hospital facility.



3400 E. Bayaud Avenue, Suite 240, Denver, CO 80209

- E. Medical Office Vacancy: Typically, we have observed medical office buildings to have 8-10% vacancy rates. Medical office buildings around the campuses of Boulder Community Health have 0-2% vacancy, as shown in the exhibit “Boulder Community Health – Current Medical Office Space”. Within a one mile radius of Boulder Community Health at 4747 Arapahoe, there is a total of 1,397,071 SF of general office space with 345,559 SF currently vacant (approximately 25%).

II. Case Studies

We have identified the following four Hospitals that have one or more traits that are similar to Boulder Community Health: Rose Medical Center at 4567 E. 9th Avenue, Denver; Porter Adventist Hospital at 2525 S. Downing Street, Denver; Avista Adventist Hospital at 100 Health Park Drive, Louisville; and Parker Adventist Hospital at 9395 Crown Crest Boulevard, Parker. The four Hospital systems together have an average number of 260 licensed beds and 192 staffed beds. The amount of medical office space within a half mile radius of these Hospitals averages 1,147 SF per licensed bed and 1,354 SF per staffed bed. The average vacancy rate of medical office space within these buildings is 8.38%.

III. Recommendations

Referring to the “Hospital Bed Analysis” provided in the exhibits, we show our findings of the correlation of number of Hospital beds to medical office space occupied. Applying this to Boulder Community Health Foothills Campus number of licensed and staffed beds, this results in a total of 241,000-304,000 SF of medical office space needed. The current total medical office space within a half mile radius of the Foothills Campus is 258,000 SF with no vacancy. Subsequently, this study demonstrates that the current demand matches the supply, but a 0% vacancy in the medical office buildings is an indicator that there may be a need for additional medical office space to accommodate Boulder Community Health’s specific supplementary physician needs. There is also no capacity for future growth and the Foothills Campus will have a need for at least approximately 20,000-46,000 SF of additional medical office space to accommodate the future needs of Boulder Community Health once all of the licensed beds are fully staffed and utilized.

Boulder Community Health - Current Medical Office Space



<u>Within 1/2 mile of Foothills Campus</u>	<u>Square Feet</u>	
Table Mesa Medical Building	11,897	
Foothills Medical Building	59,058	
Anderson Medical Center	111,031	
4800 Riverbend Rd	5,710	
4801 Riverbend Rd	6,286	
4810 Riverbend Rd	5,568	
4820 Riverbend Rd	5,900	
4840 Riverbend Rd	6,406	
4855 Riverbend Rd	6,420	
4860 Riverbend Rd	5,996	
4865 Riverbend Rd	7,734	
4880 Riverbend Rd	4,780	
4885 Riverbend Rd	8,896	
4890 Riverbend Rd	6,042	
4895 Riverbend Rd	6,230	
Tebo Family Medical Building (Cancer Treatment Center)*	42,000	
Total Medical Office Space:	257,954	0% Vacancy
Total Medical (inc. Cancer Ctr)	299,954	

*Cancer Treatment Centers have not been included in the study of medical office space on any campus because it is a Hospital provided service to acute care patients; therefore, it is an extended Hospital facility rather than "medical office space".

<u>Within 1/2 mile of North Broadway Campus</u>		
905 Alpine	8,515	3,221 Vacant
1000 Alpine-Medical Building of Boulder	29,729	
1120 Alpine	5,701	
1136 Alpine	17,909	
1155 Alpine-Medical Pavilion	56,362	
975 North Street	7,590	
1001 North Street	4,928	
Total Medical Office Space:	130,734	2.46% Vacancy

HOSPITAL BED ANALYSIS
METROPOLITAN DENVER, COLORADO



February 1, 2015

Available Medical Space to Licensed Beds
(within 1/2 mile of Hospital campus)

Hospital	# of Beds ¹	SF of Medical Office Space ²	Ratio of Available Medical Office Space per Bed	Vacancy Rate	Occupied SF of Medical Office Space	Ratio of Available Medical Office Space per Licensed Bed (less Vacancy)
Rose Medical Center	422	392,289	930 :1	9.79%	353,884	839 :1
Porter Adventist Hospital	368	280,420	762 :1	16.22%	234,936	638 :1
Avista Adventist Hospital	114	152,458	1337 :1	0%	152,458	1337 :1
Parker Adventist Hospital	134	208,695	1557 :1	7.51%	193,025	1440 :1
AVG:	259.5		1147 :1	8.38%		1064 :1

Estimated Medical Office Space Needed:

Hospital	# of Beds	Based on Avg Ratio-- SF of Medical Office Space Needed	Based on Avg Vacancy Rate-- Future Occupied SF of Medical Office Space
Boulder Community Health Foothills Campus	265	303,848	278,386

1: Source: Colorado Hospital Association

2: CoStar

Available Medical Space to Staffed Beds
(within 1/2 mile of Hospital campus)

Hospital	# of Staffed Beds ¹	SF of Medical Office Space ²	Ratio of Available Medical Office Space per Staffed Bed	Vacancy Rate	Occupied SF of Medical Office Space	Ratio of Available Medical Office Space per Staffed Bed (less Vacancy)
Rose Medical Center	262	392,289	1497 :1	9.79%	353,884	1351 :1
Porter Adventist Hospital	250	280,420	1122 :1	16.22%	234,936	940 :1
Avista Adventist Hospital	114	152,458	1337 :1	0%	152,458	1337 :1
Parker Adventist Hospital	143	208,695	1459 :1	7.51%	193,025	1350 :1
AVG:	192.25		1354 :1	8.38%		1244 :1

Estimated Medical office Space Needed:

Hospital	# of Staffed Beds	Based on Avg Ratio-- SF of Medical Office Space Needed	Based on Avg Vacancy Rate-- Future Occupied SF of Medical Office Space
Boulder Community Health Foothills Campus	178	241,000	220,805

1: Source: American Hospital Association

2: CoStar

Foothills Medical Campus



1. Anderson Medical Center

Alpine Surgical

- Boulder Breast Center
- Boulder Vein Center

Alpine Urology

Boulder Heart

Boulder Neurosurgical and Spine Associates

Foothills Surgery Center

Charles Jones, M.D.
and Susan Skaff Hagen, M.D.

2. Foothills Hospital

3. Foothills Medical Building

Alpine Spine Center

Boulder Eye Surgeons

Boulder Medical Center

- General Surgery
- Obstetrics/Gynecology
- Pediatrics

Boulder Valley Center for Dermatology

Boulder Valley Ear, Nose and Throat

Boulder Women's Care

Boulder Women's Clinic

Coffee Kiosk

Laser and Cosmetic Associates of Boulder

The Pediatric Center

Walgreens Pharmacy

4. Parking Garage

5. Patient and Emergency Entrance

6. Riverbend Office Park

7. Table Mesa Medical Building

Gastroenterology of the Rockies

Table Mesa Family Medicine

8. Tebo Family Medical Building

Brandi & Shane Conference Rooms

Center for Integrative Care

Clinical Education

Coffee Kiosk

Core Measures/Quality Data

Employee Health/Infection Prevention

Health Information Management

Human Resources

IT Training Room

Patient Safety/Quality

Rocky Mountain Cancer Centers

ATTACHMENT D: MARCH 19, 2015 PLANNING BOARD DRAFT SUMMARY

CITY OF BOULDER PLANNING BOARD ACTION MINUTES March 19, 2015 1777 Broadway, Council Chambers

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

Aaron Brockett, Chair
Bryan Bowen
Crystal Gray
John Gerstle
Leonard May
Liz Payton
John Putnam

PLANNING BOARD MEMBERS ABSENT:

None

STAFF PRESENT:

David Driskell, Director of CP&S
Susan Richstone, Deputy Director of CP&S
Hella Pannewig, Assistant City Attorney
Susan Meissner, Administrative Assistant III
Jeff Hirt, Planner II
Sloane Walbert, Planner I
Charles Ferro, Development Review Manager
Heidi Hansen, Civil Engineer II
David Thompson, Civil Engineer II, Transportation
Kendra Tupper, Energy Services Manager

PUBLIC HEARING ITEM 5A:

Public hearing to consider a recommendation to City Council on a draft ordinance amending Title 9, "Land Use Code," B.R.C. 1981, to allow medical or dental clinic or office uses and addiction recovery facilities as a conditional use in the Industrial General (IG) zoning district near Boulder Community Health (BCH), Foothills Campus.

Present a proposed schedule and approach for planning for the longer-term needs of area around the Foothills Campus and for potential Phase 2 Title 9 changes.

Staff Presentation:

S. Richstone introduced the item.

J. Hirt presented the item to the board.

Board Questions:

J. Hirt answered questions from the board.

Public Hearing:

1. Darryl Brown, 4747 Arapahoe Ave., represents Boulder Community Health (BCH). They fully support the medical zoning in areas A, B and C.

2. Khemarin Seng, MD, 975 North Street, Suite 201, from Mapleton Orthopedics explained that the surgeons must drive back and forth several times per day from their current location near the old hospital on North Broadway. They are interested in a property at 4700 Pearl near the hospital to make access more convenient to BCH.

3. Jim Rector, 3550 22nd Street, is an orthopedic surgeon and spoke in strong support of expanding the zoning to improve access to the hospital campus area. He was also interested in the 4700 Pearl Parkway property. He would ideally like to see a larger hospital campus but did not think that would be possible given floodplain and ownership limitations.

4. Scott Pudalov, 665 Dakota Blvd, owns a building at the corner of 55th and Arapahoe that has approximately 40,000 sf of medical office space for rent that may be suitable for medical office. He thought 4700 Pearl Place made sense and thought the remaining demand could be satisfied with the existing zoning.

5. Barbee James, 1800 Commerce Street, has an industrial building at 1800 Commerce. She did not want the current allowed industrial uses to change.

6. Peter Aweida, 1644 Conestoga Street, purchased land in area C in 1978 and has worked with Ball Aerospace. He thought that there was a need for additional medical buildings in the area.

Board Comments:

- The board wanted to accommodate medical uses near the hospital and thought the proposed changes to the use tables would support community goals.
- Members agreed to recommend that City Council include all of Areas A and B in the ordinance and thought that including 4700 Pearl which has a submitted building permit application made sense. While some felt comfortable retaining Area C in the recommendation if the city could put protections for existing industrial businesses in place, the board voted to exclude it at this time. Area C is currently fully leased to industrial tenants and can be added later if there is sufficient demand.
- The board felt that the retention of industrial uses is critical to Boulder's sustainability and vitality; it is okay to relocate them in town but there is little space for them to move if displaced.
- Some members considered excluding Area B to the east of Foothills Parkway. They reconsidered after hearing staff's explanation of the existing spaces available that may be suitable for medical office, and nonvehicular access to BCH.
- There was some concern about transit connections between Areas A and B and the hospital. Consider allowing alternate transit modes such as electric golf carts on the paths to shuttle patrons. Explore creative ways to enhance transportation without having to make large infrastructure changes.

- Consider the long-term vision for the area and possible means for turning this into a medical campus in the future; assure that these short-term measures will not preclude that formation.
- Collect metrics on permits, occupancy rates and uses to assess the market demand and any impacts on existing businesses.
- Members agreed that buildings in permitting processes should be eligible within Areas A and B.
- **C. Gray** requested that the minutes be included in the memo to City Council.

Motion:

On a motion by **C. Gray**, seconded by **L. May**, the Planning Board voted 7-0 to recommend that City Council adopt an ordinance amending Title 9, "Land Use Code," B.R.C. 1981, to conditionally allow medical or dental clinic or office uses and addiction recovery facilities as a conditional use in the Industrial General zoning district in close proximity to the Boulder Community Health Foothills campus and setting forth related details including a recommendation of applying the ordinance in the following areas: Area A and Area B and adding buildings for which a building permit application has been filed by using the alternative language proposed in the memo reading as follows: "(C) *The use must be located in an existing building or with a building for which a building permit for new construction was submitted on the lot or parcel on or before June 4, 2015.*"



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: Introduction, first reading and consideration of a motion to order published by title only Ordinance No. 8041 to rezone the property located at 1900 Folsom Street, from Business Transitional – 2 to Business Regional – 1, consistent with the Boulder Valley Comprehensive Plan land use designation of General Business.

PRESENTER/S

Jane S. Brautigam, City Manager

David Driskell, Executive Director of Community Planning + Sustainability

Susan Richstone, Deputy Director of Community Planning + Sustainability

Charles Ferro, Development Review Manager

Chandler Van Schaack, Planner I

EXECUTIVE SUMMARY

The proposed ordinance (*Attachment A*) is for a rezoning of the property located at 1900 Folsom Street from BT-2 (Business Transitional – 2) to BR-1 (Business Regional – 1). The rezoning is consistent with the Boulder Valley Comprehensive Plan (BVCP) land use designation for the site of General Business and is consistent with the description of the Boulder Valley Regional Center (BVRC) in the BVCP as one of the city's three regional centers with the highest level of intensity.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to introduce on first reading and order published by title only Ordinance No. 8041 rezoning the property located at 1900 Folsom Street from Business Transitional – 2 to Business Regional – 1, consistent with the Boulder Valley Comprehensive Plan land use designation of General Business.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The site lies within the Boulder Valley Regional Center (BVRC), which is described in the Boulder Valley Comprehensive Plan (BVCP) as one of the city’s three regional centers with the highest level of intensity. The current BT-2 zoning designation is intended primarily to buffer residential areas from major streets, and allows for residential and less intensive commercial uses. The proposed rezoning would allow for a number of more intensive sales tax producing uses on the site.
- Environmental – The proposed rezoning would allow for a higher Floor Area Ratio (FAR) than the existing zoning, which would allow for the site to be redeveloped as a mixed-use building with both residential and commercial uses located in close proximity to transit and other multi-modal transportation facilities.
- Social – The rezoning will help to implement the goals of the BVRC Design Guidelines and Boulder Plaza Subarea Plan, which guide redevelopment and evolution of the area into a more attractive, pedestrian-, bicycle- and transit-friendly place in accordance with the goals and policies of the BVCP.

OTHER IMPACTS

- Fiscal – City services are existing and available to this site.
- Staff time: The applicant has submitted the required rezoning application fee to cover staff review time of this application for a rezoning.

BOARD AND COMMISSION FEEDBACK

Planning Board reviewed the Rezoning request at a public hearing on March 5, 2015, and on a motion by J. Putnam, seconded by B. Bowen, the Planning Board voted 7-0 to recommend approval of rezoning request number LUR2014-00084 to City Council incorporating the staff memorandum as findings of fact.

It should be noted that this Rezoning request was submitted concurrent with a Concept Plan review, both of which were heard by the Planning Board at their March 5, 2015 meeting (meeting packet and minutes available [here](#); go to 2015 → 03 Mar). City Council may vote to call-up the Concept Plan to review and discuss within 30 days of the Planning Board hearing. City Council did not vote to call up the Concept Plan review at the March 17, 2015 meeting, and the call up period expired on April 6, 2015.

PUBLIC FEEDBACK

Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject site including the Horizon West HOA, and a sign posted on the property for at least 10 days. All notice requirements of section 9-4-3, B.R.C. 1981 have been met.

Staff initially received comments from several residents of the nearby Horizons West development expressing opposition to the proposed Rezoning and Concept Plan proposal.

Specifically, residents expressed concerns about a proposed height modification to allow for a 48 foot building height as originally included in the Concept Plan review. However, following City Council's approval on Feb. 26, 2015 of second reading of a building height modification ordinance that would not include the BVRC outside of the Twenty Ninth Street Shopping District in the exempted area for which height modifications could be considered through the Site Review process, the project site would no longer be eligible. City Council will consider fourth and final reading of the height modification ordinance on April 7, 2015.

No further public comments were received after the second reading of the ordinance, and there were no neighborhood comments at the March 5, 2015 Planning Board public hearing, at which the applicant presented new Concept Plan materials showing a building that did not exceed the 35 foot by-right height limit. While the revised Concept Plan proposal is within the height limitations for both the existing BT-2 and proposed BR-1 zoning, the proposed Floor Area Ratio (FAR) for the project is still roughly 1.47, which exceeds the 0.5 FAR for the BT-2 zone and thus requires a rezoning to BR-1 to obtain.

BACKGROUND

Please see **Attachment B** for detailed background information.

ANALYSIS

Rezoning criteria of Land Use Code section 9-2-18(e)(1), B.R.C. 1981 states,

The city council shall grant a rezoning application only if the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan, and, for an application not incidental to a general revision of the zoning map, meets one of the following criteria (applicable criterion below):

The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map;

Staff finds the requested rezoning to be consistent with the goals and policies of the Boulder Valley Comprehensive Plan (BVCP). Specifically, as discussed in further detail below, the proposed rezoning would make the property more consistent with the General Business land use designation for the site as well as the description of the Boulder Valley Regional Center in the BVCP as one of the city's three regional centers with the highest level of intensity. The BVCP further describes the Boulder Valley Regional Center as primarily a commercial area, providing retail at a range of scales, restaurants, offices, and hotels, in the geographic center of Boulder, but also some high-density housing. The proposed rezoning would be consistent with these goals for this area by applying a zoning district intended specifically for the BVRC and other business centers of the Boulder Valley containing a wide range of retail and commercial operations, including the largest regional-scale businesses.

Rezoning of the property located at 1900 Folsom is necessary to come into compliance with the Boulder Valley Comprehensive Plan (BVCP) land use map, as the intent of the current zoning on the site does not conform to the current BVCP land use designation of General Business. As described above, the BT-2 zone is intended primarily to buffer residential areas from a major street. The General Business land use designation, however, is not intended to buffer residential areas but to allow for the continuation of intensive commercial uses near junctions of major arterials. The intent of the BR-1 zone to allow for a wide range of retail and commercial operations is more consistent with the intent of the General Business land use designation to allow for the continuation of intensive commercial uses near junctions of major arterials. Therefore, given the project site's location within the BVRC; the absence of adjacent residential areas; and the historic precedent of applying BR-1 zoning to properties within the BVRC with a General Business land use designation, staff recommends approval of the proposed rezoning application.

ATTACHMENTS

Attachment A: Ordinance No. 8041

Attachment B: Detailed Background Materials

ORDINANCE NO. 8041

AN ORDINANCE REZONING 1.28 ACRES OF LAND LOCATED AT 1900 FOLSOM STREET FROM BUSINESS TRANSITIONAL – 2 (BT-2) TO BUSINESS REGIONAL – 1 (BR-1) ZONING CLASSIFICATION AS DESCRIBED IN CHAPTER 9-5, “MODULAR ZONE SYSTEM,” B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

WHEREAS THE CITY COUNCIL FINDS AND RECITES THE FOLLOWING:

A. A public hearing before the Planning Board of the City of Boulder was duly held on March 5, 2015, in consideration of rezoning approximately 1.28 acres of land from Business Transitional – 2 (BT-2) to Business Regional – 1 (BR-1), that is a parcel of land generally located at 1900 Folsom Street, and more particularly described as Lot 1, Folsom Subdivision, City of Boulder, County of Boulder, State of Colorado (the “Property”);

B. The Planning Board found that the rezoning of the Property from Business Transitional – 2 (BT-2) to Business Regional – 1 (BR-1) is consistent with the policies and goals of the Boulder Valley Comprehensive Plan; is necessary to bring the Property into compliance with the Boulder Valley Comprehensive Plan; and meets the criteria for rezoning as provided in Chapter 9-2, “Review Processes,” B.R.C. 1981;

C. The Planning Board recommended that the City Council amend the zoning district map to include the Property in the Business Regional – 1 (BR-1) zoning district as provided in Chapter 9-5, “Modular Zone System,” B.R.C. 1981;

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

1 Section 1. Chapter 9-5, “Modular Zone System,” B.R.C. 1981, and the zoning
2 district map forming a part thereof are amended to include the Property within the
3 Business Regional – 1 (BR-1) zoning district.

4 Section 2. The City Council finds that the rezoning of the Property from Business
5 Transitional – 2 (BT-2) to Business Regional – 1 (BR-1) is consistent with the policies
6 and goals of the Boulder Valley Comprehensive Plan, is necessary to bring the Property
7 into compliance with the Boulder Valley Comprehensive Plan, and meets the criteria for
8 rezoning as provided in Chapter 9-2, “Review Processes,” B.R.C. 1981. The City
9 Council adopts the recitals as a part of this ordinance.

10 Section 3. The City Council has jurisdiction and legal authority to rezone the
11 Property.

12 Section 4. This ordinance is necessary to protect the public health, safety, and
13 welfare of the residents of the city and covers matters of local concern. The rezoning of
14 the Property bears a substantial relation to, and will enhance the general welfare of, the
15 Property and of the residents of the City of Boulder.

16 Section 5. The City Council deems it appropriate that this ordinance be published
17 by title only and orders that copies of this ordinance be made available in the office of the
18 city clerk for public inspection and acquisition.
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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED

BY TITLE ONLY this 7th day of April, 2015.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED

PUBLISHED BY TITLE ONLY this 5th day of May, 2015.

Mayor

Attest:

City Clerk

BACKGROUND.

The 1.28-acre project site is located in Central Boulder at the northeast intersection of Folsom Street and Walnut Street, immediately south of and sharing an access with the existing Mike's Camera site. The site is occupied by an existing two-story, 22,353 square foot office building constructed in 1973. There is a large surface parking lot surrounding the building on its north and east sides with 71 existing parking spaces, two bike parking spaces, and several existing, mature trees along Walnut Street and on the north side of the site. Refer to **Figures 1 and 2** below for existing site conditions. The property is located within the regulatory 100-year floodplain of the Boulder Slough Restudy, adopted by City Council in November 2014, so the site must be developed in compliance with Section 9-3-3 of the Boulder Revised Code, 1981.

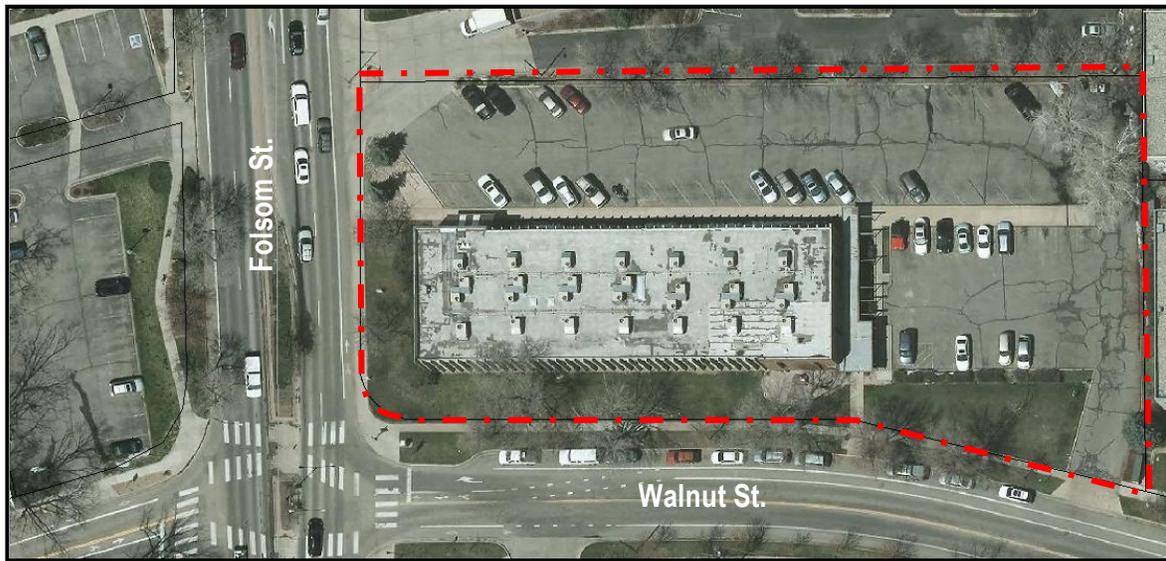


Figure 1: Aerial of Existing Site



Figure 2: View of Existing Office Building from SW Corner of Site

The project site lies within the Boulder Valley Regional Center (BVRC), and as such is subject to the BVRC Design Guidelines (the Guidelines). The Guidelines were originally created by the Boulder Urban Renewal Authority (BURA) in 1987, and later revised in 1991 and 1998. The Guidelines were created “to bring predictability to the development objectives in the BVRC” and allow BURA to better fulfill its mission to “maintain and enhance a high-quality regional commercial center in the Crossroads area.”

The project site is also located within a subarea of the greater BVRC known as the Boulder Plaza Subarea, which is the area between 28th Street to the east and Folsom Street to the west, and Pearl Street and Canyon Boulevard to the north and south, and as such is subject to the guidelines contained within the 1992 Boulder Plaza Subarea Plan (the Subarea Plan) as well as the BVRC Guidelines. The Boulder Valley Comprehensive Plan (BVCP) land use designation for the site is General Business. The BVCP Land Use Map description for General Business areas is as follows:

The General Business areas are located, for the most part, at junctions of major arterials of the city where intensive commercial uses exist. The plan proposes that these areas continue to be used without expanding the strip character already established.

The western portion of the Boulder Plaza Subarea in which the project site lies has had a land use designation of General Business since the original Boulder Valley Comprehensive Plan was adopted in 1977, with the remainder of the Subarea having a land use designation of Regional Business (see **Figure 3** above).

Within the Subarea, the area north of Walnut and South of Pearl between Folsom and 26th and including the properties fronting Folsom Street on the west was originally zoned Transitional Business (now BT-2), and the area

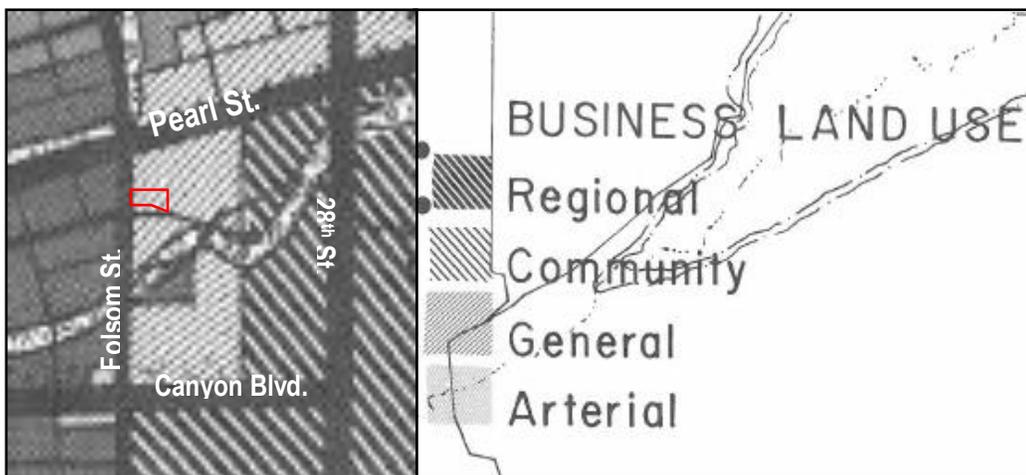


Figure 3: 1977 Land Use Map - General Business

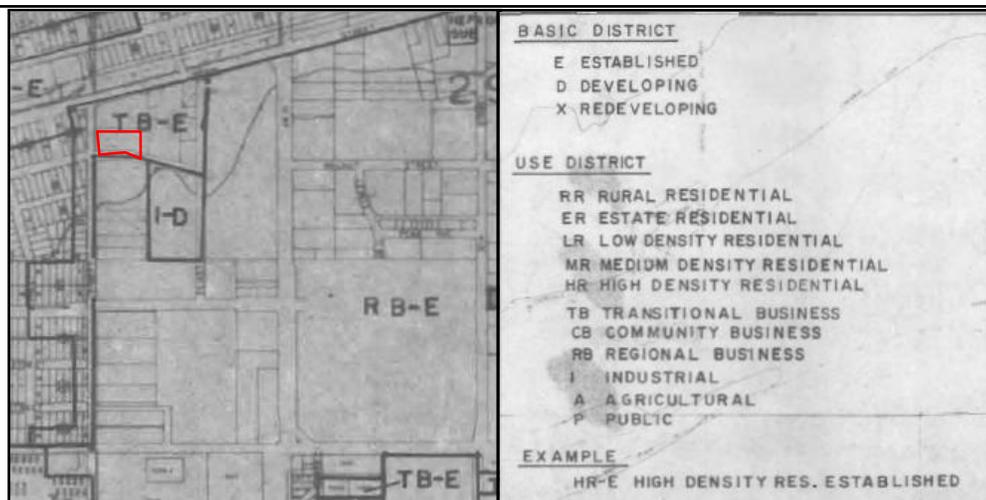
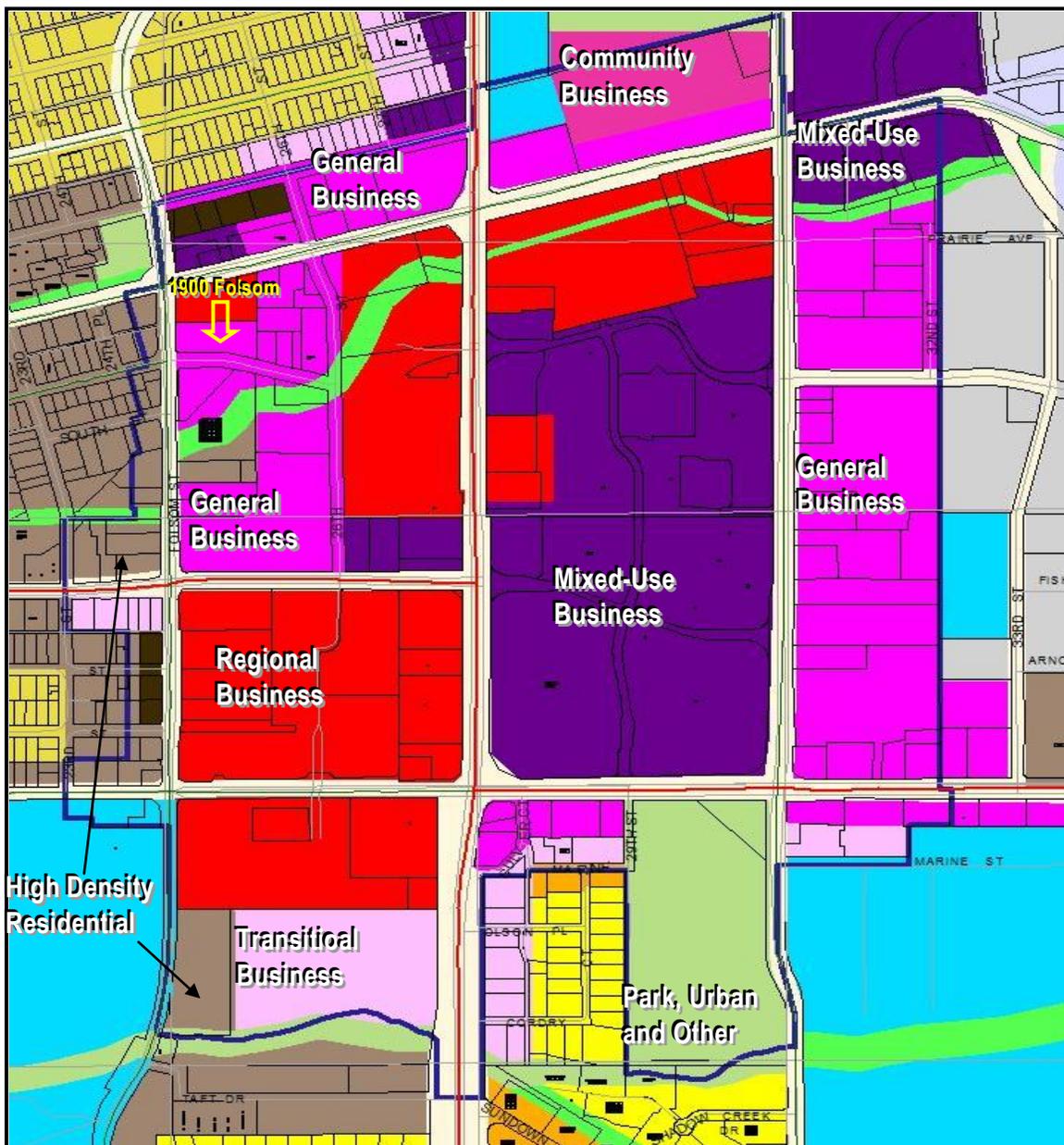


Figure 4: 1977 Zoning Map – TB-E

south of Walnut and north of Canyon along 26th was originally zoned Industrial Developing, with the remainder of the Subarea zoned Regional Business (now BR-1). Refer to **Figure 4** for the 1977 Zoning Map of the Subarea.

In 1981, the zoning for the area south of Walnut and north of Canyon along the west side of 26th was changed from Industrial Developing to Regional Business. In 1984, the properties at the corner of 26th and Pearl were rezoned from Transitional Business to Regional Business. The most recent rezoning that has occurred within the Subarea is the Mike's Camera site at the corner of Pearl and Folsom, which was rezoned from Transitional Business to Regional Business in 1991, along with a land use designation change from General Business to Regional Business. Currently, the properties along the west side of Folsom are zoned Transitional Business (BT-2) along with the six properties fronting on the north side of Walnut (including the project site); however, all of the other parcels within the Subarea with a land use designation of General Business have been rezoned to Regional Business (BR-1). Please refer to **Figures 5 and 6** for current land use and zoning maps (BVRC Boundary shown in blue).



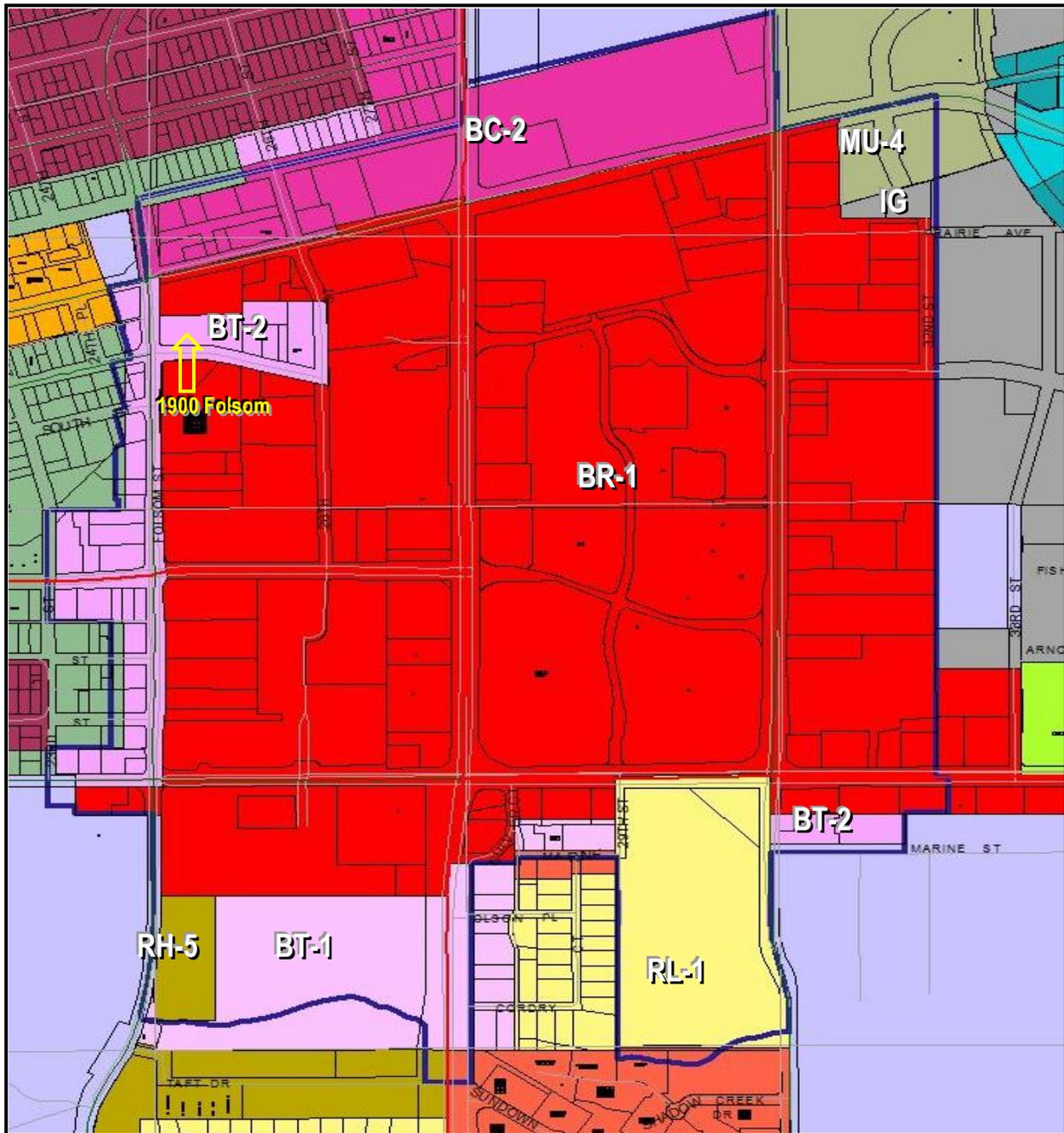


Figure 4: BVRZ Zoning Map

The Applicant is requesting to rezone the property from Business – Transitional 2 (BT-2) to Business – Regional 1 (BR-1) to come into compliance with the Boulder Valley Comprehensive Plan (BVCP) land use map. BR-1 is a more intense zone district that supports a number of commercial and residential uses including regional scale businesses. The definition of the BT-2 zone district as set forth in section 9-5-2(c)(2)(E), B.R.C. 1981 is as follows:

Transitional business areas which generally buffer a residential area from a major street and are primarily used for commercial and complementary residential uses, including without limitation, temporary lodging and office uses.

As the definition indicates, most residential uses including duplexes and attached housing are allowed by-right in the BT-2 zone, and a variety of less intensive commercial and office uses are permitted by-right as well. However, all restaurant uses require a Use Review to operate. In addition, small-scale retail uses such as “convenience retail” require a Use Review to operate, and any retail use over 5,000 square feet in floor area is prohibited. Intensity in the BT-2 zone district is regulated by a minimum lot size per dwelling unit of 1,600 square feet, a minimum open space per dwelling unit requirement of 600 square feet and a minimum open space requirement for nonresidential uses of 10-20%. In addition, the BT-2 zone district allows for a maximum Floor Area Ratio (FAR) of 0.5:1. The threshold for mandatory Site Review under the existing BT-2 zoning is two acre lot size or 30,000 square feet of floor area. Refer to Figure 4 above for the existing zoning.

The applicant is proposing to rezone the property to Business – Regional 1 (BR-1), which is defined in section 9-5-2(c)(2)(I), B.R.C. 1981 as follows:

Business centers of the Boulder Valley, containing a wide range of retail and commercial operations, including the largest regional-scale businesses, which serve outlying residential development; and where the goals of the Boulder Urban Renewal Plan are implemented.

By definition, the BR-1 zone allows a variety of retail and commercial uses by-right, and includes all of the uses allowed in the BT-2 zone as well most restaurants, brewpubs and taverns and retail uses from over 5,000 to over 20,000 square feet. Building material sales, which are prohibited in BT-2, are allowed through Use Review. Similarly, a variety of automobile-oriented uses such as car washes, fuel service stations, auto dealerships and auto repair shops are prohibited in BT-2 and allowed through Use Review in BR-1. Intensity in the BR-1 zone district is regulated by a minimum lot size per dwelling unit of 1,600 square feet and a minimum open space requirement for nonresidential uses of 10-20%. The allowable FAR for the BR-1 zone is 2.0, with an additional 2.0 bonus for a total FAR of 4.0 possible through the Site Review process for projects that meet certain criteria pertaining to site design, open space, architecture, use, historic preservation and parking. As discussed under “Public Feedback” in the staff memorandum, the FAR proposed for the site through the concurrent Concept Plan review submitted with the Rezoning request is roughly 1.47, which requires a rezoning from BT-2 to BR-1 to obtain.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: First reading and consideration of a motion to adopt Emergency Ordinance No. 8042, amending Chapter 6-4, B.R.C. 1981, to create consistency with the legislative intent in adopting Ordinance No. 8015, related to expansion of smoke free areas, by amending Sections 6-4-3.5, 6-4-6, and 6-4-7, 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

On February 17, 2015, City Council adopted Ordinance No. 8015 which expanded smoke free areas in the city. This ordinance became effective on March 19, 2015.

Ordinance No. 8015 made changes to Chapter 6-4, “Regulation of Smoking”. One of the amendments adopted in Ordinance No. 8015 increased the distance which prohibits smoking from entryways from fifteen feet to twenty five feet by changing the definition of “entryway”. There are other sections of Chapter 6-4 (specifically B.R.C. 6-4-6 and 6-4-7) that also address entryways but which were not included in Ordinance No. 8015. Those sections currently incorrectly state the distance requirement as fifteen feet rather than the legislative intent of twenty-five feet. Therefore, those sections must now be amended in order to create consistency with city council’s legislative intent in adopting Ordinance No. 8015 and to avoid any potential public confusion.

In addition, it is proposed that the use of a term (“curtilage”) in B.R.C. 6-4-3.5(d) be replaced by language that refers to the area on both sides of any trail.

These proposed changes are non-substantive. It is recommended that these proposed changes be adopted by emergency at first reading to make sure that the changes coincide with the effective date, or as close to it as possible, to the ordinance that was passed on

February 17, 2015 (Ordinance No. 8015) effective on March 19, 2015. If council adopts this emergency ordinance on April 7, 2015, it will become effective on the same day.

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 is in place to inform the public about the expanded smoking ban before enforcement begins.

STAFF RECOMMENDATION

Suggested Motion Language

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

First reading and consideration of a motion to adopt Emergency Ordinance No. 8042, amending Chapter 6-4, B.R.C. 1981, to create consistency with the legislative intent in adopting Ordinance No. 8015, related to expansion of smoke free areas, by amending Sections 6-4-3.5, 6-4-6, and 6-4-7, and setting forth related details.

BOARD AND COMMISSION FEEDBACK

Not applicable.

PUBLIC FEEDBACK

Not applicable. The proposed changes are non-substantive.

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. On February 17, 2015, City Council adopted Ordinance No. 8015 expanding smoke free areas.

[First reading of the ordinance](#) took place on Nov. 18, 2014. [Second reading and a public hearing](#) occurred on Feb. 3, 2015.

ANALYSIS

For a complete analysis of the ordinance, see the Nov. 18, 2014 [first reading memo](#) and the Feb. 3, 2015 [second reading memo](#) and the Feb. 17, 2015 [third reading memo](#).

NEXT STEPS

The ordinance became effective on March 19, 2015.

- **March 2015:** City staff are working in cooperation with Boulder County Department of Public Health's Tobacco Education and Prevention Program to finalize

development of smoking cessation messaging and preparation of citywide outreach content for print and digital 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 educating visitors about the smoking ban as part of their seasonal outreach efforts.

ATTACHMENTS

Attachment A – Emergency Ordinance No. 8042, amending Chapter 6-4, B.R.C. 1981, to create consistency with the legislative intent in adopting Ordinance No. 8015, by amending Sections 6-4-3.5, 6-4-6, and 6-4-7, and setting forth related details.

1 ORDINANCE NO. 8042

2
3 AN EMERGENCY ORDINANCE AMENDING CHAPTER 6-4,
4 B.R.C. 1981, TO CREATE CONSISTENCY WITH THE
5 LEGISLATIVE INTENT IN ADOPTING ORDINANCE NO.
6 8015, BY AMENDING SECTIONS 6-4-3.5, 6-4-6, AND 6-4-7,
7 AND SETTING FORTH RELATED DETAILS

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

10 Section 1. Section 6-4-3.5, B.R.C. 1981, is amended to read:

11 **6-4-3.5. Smoking Prohibited in Public Areas.**

12 No person shall smoke in a public area;

13

- 14 (d) on any trail, path or multi-use paths and within twenty-five feet on both sides of
15 ~~entrance to~~ any trail, path, or multi-use path;

16

17 Section 2. Section 6-4-6, B.R.C. 1981, is amended to read:

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
22 less than three inches high as follows:

23

- 24 (4) A sign using the words "No Smoking within ~~twenty-five~~ fifteen feet of the
25 entryway" shall be posted conspicuously on all entryways of buildings, enclosed
26 areas, or establishments.

27

28 Section 3. Section 6-4-7, B.R.C. 1981, is amended to read:

29 **6-4-7. Additional Responsibilities of Proprietors.**

30

1 (b) No owner, principal manager, proprietor, or any other person in control of a business
2 shall fail to ensure compliance by subordinates, employees, and agents with both the
3 restrictions on sale and display of tobacco products contained in Section 6-4-8,
4 "Restrictions on Sale and Display of Tobacco Products," B.R.C. 1981, and the
5 restrictions on smoking within twenty-five ~~fifteen~~ feet of any entryway contained in
6 Section 6-4-9, "Entryway," B.R.C. 1981.

7 Section 4. This ordinance is necessary to protect the public health, safety, and welfare of
8 the residents of the city, and covers matters of local concern.

9 Section 5. The Smoking Ban Ordinance No. 8015 went into effect on March 19, 2015.
10 Ordinance No. 8015 made changes to Chapter 6-4. There are additional portions of Chapter 6-4
11 that need to reflect changes made by Ordinance No. 8015 in order to create consistency with the
12 legislative intent and avoid any potential confusion by the public. In addition, the use of a term
13 was replaced by another adjective to avoid any potential confusion by the public. These
14 proposed changes are non-substantive. These changes need to coincide as near as possible to the
15 effective date of Ordinance No. 8015. On that basis, this ordinance is declared to be an
16 emergency measure and shall be in full force and effect upon its final passage.

17 INTRODUCED, READ AND ADOPTED ON FIRST READING BY EMERGENCY,
18 AND ORDERED PUBLISHED BY TITLE ONLY this 7th day of April, 2015.

19 _____
20 Mayor

21 Attest:

22 _____
23 City Clerk
24
25



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: April 7, 2015**

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance No. 8032 granting a 10-year franchise to Comcast of Colorado IV, LLC; approving a 10-year cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC; and authorizing the city manager to sign all agreements attendant thereto.

PRESENTERS

Jane S. Brautigam, City Manager
Don Ingle, Director, Information Technologies
Patrick von Keyserling, Communication Director
Debra Kalish, Senior Assistant City Attorney
Carl Castillo, Policy Advisor

EXECUTIVE SUMMARY

The city is party to a non-exclusive franchise agreement (the “Existing Franchise Agreement,” **Attachment A**) with Comcast of Colorado IV, LLC (“Comcast”) which allows Comcast to use the city’s public rights of way to provide cable television services. This agreement, originally set to expire on Dec. 31, 2011, has been extended three times, most recently from Jan. 1, 2015 to May 1, 2015. The purpose of this agenda item is to allow council to consider adopting an ordinance (**Attachment B**) granting Comcast a new 10-year franchise and approving a 10-year cable television franchise agreement (the “Proposed Franchise Agreement,” included along with the ordinance) between the city and Comcast. This ordinance was approved on first reading on March 3, 2015, and there were no questions. Highlights of the Proposed Franchise Agreement are summarized below.

It is important to emphasize some points about why the city enters into cable franchise agreements and the powers and limitations that come with this authority:

- **Permission to Use City ROW** - The city enters into cable franchise agreements to permit private providers to use city right-of-way (“ROW”) to run their cable lines to provide multi-channel program service. Multi-channel program service providers that do not require use of city ROW (i.e., satellite service providers) are not required to enter into a cable franchise agreement with the city.
- **Non-Exclusive Agreement** – Pursuant to Section 109 of the Boulder Home Rule Charter, no exclusive franchises may ever be granted. This means franchise agreements may not prevent other entrants from using city ROW to provide competing services.
- **Renewal** – Under federal law, a cable franchise will generally be renewed unless it has not met the terms of its existing franchise agreement or will not be able to provide adequate service to meet the cable-related needs of the community in the future.
- **Permitted Areas for Regulation** - The issues that may be considered in deciding whether to renew a cable franchise agreement relate primarily with:
 - Substantial compliance with the terms of an existing franchise;
 - Customer service, including signal quality, response to consumer complaints and billing practices;
 - Technical ability to provide cable television service;
 - Financial ability to provide cable television service; and
 - Legal ability to provide cable television service.
- **Limitations on Regulations** - Federal law limits the city’s right to condition renewal upon Comcast’s willingness to address other issues of interest to the community, such as cable service rates, channel programming and programming packages (including the ability to choose particular cable channels, also known as "a la carte service"), or telecommunication services (including Internet or voice over internet protocol services).
- **No Election for Renewal** - Boulder’s Home Rule Charter, at Article VIII, § 108, requires a vote of the electorate to approve all franchises. However, that charter provision was preempted by federal statute. *See Qwest v. Boulder*, 151 F. Supp.2d 1236 (2001), interpreting that statute. Accordingly, there will be no election concerning a renewal of the Comcast’s franchise agreement.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt Ordinance No. 8032 granting a 10-year franchise to Comcast of Colorado IV, LLC, approving a 10-year cable television franchise agreement between the City of Boulder and Comcast of Colorado IV, LLC in substantially the form included as an attachment to the ordinance (**Attachment B**); and authorizing the City Manager to

sign all agreements attendant thereto.

FISCAL IMPACTS

The city currently collects an annual franchise fee equal to 5 percent of Comcast's "gross revenue," as that term is defined in Section 11-6-2 of the Boulder Revised Code 1981. In 2014, this amounted to \$1,272,234. This revenue is directed to the city's general fund.

The city also collects \$.50 per subscriber in public, educational and government ("PEG") access channel fees. Since the discontinuation of Public Access Channel 54 in 2008, the city has allocated the PEG fees to Educational Channel 22 and for Government Channel 8. In 2014, the PEG revenue generated from these fees totaled \$147,346.73. This revenue is limited by federal law to capital costs associated with these access channels.

PUBLIC FEEDBACK

On behalf of Comcast, but with input from the city, *Talmey-Drake Research & Strategy, Inc.*, a public opinion research firm in Boulder, conducted a resident survey in November 2009 and again in May 2013. Key findings from that most recent survey were:

- Almost 6 of 10 cable customers (57%) in the City of Boulder say they are either very (21%) or somewhat (36%) satisfied with the cable service they receive, a rating that's down 11 points from 2009. They are most satisfied with the technical quality they receive (74%), followed by the quality of their channel line-up (68%). Like overall satisfaction with cable, the rating for satisfaction with customer service has also declined, going from 70% in 2009 to 58% today. Additionally, rates have become an increasingly important issue with Boulder customers, as 49% now say the rate they pay for cable is "way too high," compared to 38% back in 2009.
- When asked to rate the importance of each of the three access channels available to cable customers in Boulder, only one, Channel 8, had a higher positive (59% for "very" or "somewhat") than negative (40% for "not too" or "not at all") importance rating. The other two access channels, 22 and 63, did not fare nearly so well.

BACKGROUND

The city last entered into a new franchise agreement with Comcast in February 2004. This agreement, originally set to expire on Dec. 31, 2011, has thrice been extended: first until Dec. 31, 2013; then until Dec. 31, 2014, then most recently for an additional 120 days until May 1, 2015, in order to allow time for staff to complete franchise negotiations. City Council granted the first two extensions to allow Denver and Aurora to complete their franchise negotiations with Comcast. The Colorado Communications and Utilities Alliance ("CCUA") has based its model franchise agreement on the agreements worked out with those cities. The Proposed Franchise Agreement is based on the CCUA model agreement, but also incorporates important requirements found in the city's Cable Code (Chapter 11-6 of the Boulder Revised Code 1981) and the Customer Service Standards found in Appendix A to the Cable Code.

ANALYSIS

The following are the main highlights of the requirements of the Proposed Franchised Agreement:

1. **Ten-Year Term** – Given the speed at which service in the telecommunications arena is changing, the Proposed Franchise Agreement would be in place for just ten-years.
2. **Customer Service Requirements** – Much has changed in the delivery of customer service since 2004 and the Customer Service Standards attached to the Proposed Franchise Agreement reflect those changes. The Customer Service Standards address several matters including minimum requirements for providing courtesy, accessibility, and responsiveness and establish a complaint procedure for receiving, acting upon and resolving customer complaints to Comcast, or to the city as the franchising authority, and the right of the city to impose financial assessments to remedy violations. While the standards do not require a service center in the City of Boulder, Comcast opened a new such service center in 2014 located at 2900 W. Baseline Road that serves multiple Boulder County cities. The new standards require Comcast to have that center fully staffed for longer hours than are currently required and to offer the following services: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.
3. **Franchise Fee** – As compensation for benefits received, Comcast will continue to pay an amount equal to 5 percent of its gross revenues to the city.
4. **PEG Channels and Fees** – Comcast will continue to provide the city with four standard definition channels for Public, Educational or Government Access (“PEG) use. In addition, Comcast will begin providing one high definition access channel and allow the city to request a second such channel three years after this agreement in exchange for giving up one of the three SD channels. Comcast will also continue to provide \$.50 per month per subscriber in PEG fees, and the city will continue to have the authority to increase that rate up to \$1.00 per month per subscriber. If a public access or government access channel is underutilized, the Proposed Franchise Agreement permits Comcast to use that channel for other programming until the city provides notice to Comcast that the channel will again be fully utilized.
5. **Web-Based Video on Demand and Streaming** – Comcast will provide a \$25,000 grant to the city for use in acquiring equipment to facilitate cable and web-based access programming.
6. **Free Service and Access Boxes for City Use** - Comcast will continue to provide, at no cost to the city, one outlet of Basic Service and Digital Starter Service to all city-owned and occupied buildings. Pursuant to a letter agreement that will be executed with Comcast, the form of which is included as **Attachment C**, once the city activates an HD Digital Access Channel, Comcast will also provide, at no cost to the City, one outlet of basic HD service and one HD cable box to be located at the Channel 8 office, for the city to monitor the HD Digital Access Channel’s signal.

7. **Promotion of PEG Programming** - Comcast will work with the City to assist in the promotion of PEG programming. The side agreement calls for Comcast to provide both cable box and bill messages to subscribers and to accommodate a minimum of 25 30-second promotional spots per year.

8. **Applicability of City Ordinances** – In addition to the requirements spelled out in the Proposed Franchise Agreement, Comcast is also bound to comply with all applicable city ordinances and regulations, including the Boulder Cable Code (Title 6, Chapter 6, BRC) and the Construction Design Guidelines. However, if there is a direct conflict between the city’s current ordinances and the terms of the Proposed Franchise Agreement, the terms of the Proposed Franchise Agreement will control.

NEXT STEPS

Staff may return to council in the future with suggested amendments to the Cable Code (especially the Customer Service Standards) if staff concludes that amendments would reduce confusion or the current provisions no longer seem applicable.

ATTACHMENTS

Attachment A: Current Franchise Agreement with Comcast

Attachment B: Ordinance Approving Proposed Franchise Agreement with Comcast, inclusive of the Proposed Franchise Agreement

Attachment C: Letter Agreement with Comcast

**FRANCHISE AGREEMENT
City of Boulder, Colorado
and
Comcast of Colorado IV, LLC**

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**FRANCHISE AGREEMENT
BETWEEN THE CITY OF BOULDER, COLORADO
AND COMCAST OF COLORADO IV, LLC**

WHEREAS, the Boulder City Council accepted a draft ascertainment report (dated June 19, 2002) as a valid expression of customer concerns regarding current cable service in the City of Boulder (“City”) and as a valid expression of future cable-related community needs and interests; and

WHEREAS, the City has determined that any franchise must be subject to the terms and conditions set forth herein in order to serve the public interest; and

WHEREAS, Comcast of Colorado IV, LLC is willing to accept the terms and conditions of this Franchise Agreement, and

WHEREAS, the City has determined that, subject to the terms and conditions set forth herein and the provisions of Chapter 11-6, B.R.C 1981 (The Boulder Cable Code, hereinafter referred to as the “cable ordinance”), and other applicable provisions of the Boulder Revised Code and the Boulder City Charter, granting Comcast of Colorado IV, LLC a non-exclusive franchise pursuant to this Franchise Agreement is consistent with the public interest, and

NOW, THEREFORE, in consideration of the City's issuance of a franchise; Comcast of Colorado IV, LLC's promise to provide cable service to residents of the City under the terms and conditions set forth herein, the promises and undertakings herein; and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

THE SIGNATORIES HEREBY AGREE AS FOLLOWS.

1. Definitions

Except as otherwise provided herein, the definitions and word usage set forth in Section 11-6-1, B.R.C 1981 (The Boulder Cable Code) shall govern this Franchise Agreement. References to any City official or City office also refer to any official or office that succeeds to any or all of the responsibilities of the named official or office, whether by delegation, succession or otherwise. The following definitions shall apply:

1.1 *Applicable Law or Laws* All duly enacted and applicable federal, state and city constitutions, charters, laws, ordinance, codes, rules, regulations and orders, as the same may be adopted or amended from time to time

1.2 *Cable Ordinance* Chapter 11-6, B.R.C 1981, as amended from time to time.

1.3 *Cable System or System.* Defined as in the cable ordinance, as of the effective date of this Franchise Agreement, except where the context indicates otherwise, it specifically refers to Franchisee's cable system.

1.4 *Channel* A portion of the electromagnetic frequency spectrum, or a digitally encoded stream of content, which is used in a cable system and capable of delivering a television channel, as television channel is defined by the FCC by regulation. While a channel must be at least capable of delivering a video programming service, a channel is not restricted to the transmission of video programming services

1.5 *Construction, Operation or Repair* Encompass, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming.

1.6 *Franchise Agreement* This Franchise Agreement and any amendments or appendices hereto

1.7 *Franchisee* Comcast of Colorado IV, LLC, a limited liability company company, and its lawful and permitted successors and assigns.

1.8 *Institutional Network or I-net* A communication network which is constructed by Franchisee and which is available only to City authorized users

1.9 *Standard Drop* An aerial connection extending no more than 125 feet from the potential Subscriber's demarcation point to the point nearest the property line on the public right-of-way, or if closer, to the nearest point on the Cable System from which Cable Service can be provided to that Subscriber.

1.10 *Subscriber Network.* Fibers, coaxial cables and the electronic devices required to activate the same that are primarily used in the transmission of programming to residential subscribers.

2. Scope of Franchise; Limits and Reservations

2.1 Scope.

2.1.1 A cable system franchise is hereby granted to Franchisee This franchise grants the right, subject to conditions, to construct, operate and repair a cable system in, over, along and under City rights of way within the City of Boulder for the purpose of providing cable service, and for providing an institutional network and other facilities or services for PEG use of the cable

system, commencing on the effective date of this Franchise Agreement, January 1, 2004 through and including December 31, 2011, unless terminated prior to that date in accordance with this Franchise Agreement or applicable law. The franchise is subject to, and Franchisee must exercise all rights granted to it in accordance with, this Franchise Agreement and applicable law, including the cable ordinance. This Franchise Agreement and all rights and privileges granted under the franchise are subject to the City's police and other powers. However, once the franchise grant is effective, this Franchise Agreement is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this contract. Subject to the foregoing, Franchisee does not waive its right to challenge the lawfulness of any particular amendment to the cable ordinance or any other provision of the City code on the ground that a particular action is in excess of the City's power under Colorado or federal law or violates the Colorado or the United States Constitution.

2.1.2 This franchise does not confer rights upon Franchisee other than as expressly provided herein. No privilege or power of eminent domain is bestowed by this grant. All rights and powers of the City now existing or hereafter obtained are reserved except as expressly provided to the contrary in this Franchise Agreement. Nothing passes by implication under this Franchise Agreement. Subject to the foregoing, Franchisee shall provide the cable services required hereunder throughout the franchise term and any holdover term, and shall make any cable services it provides over its cable system available to all persons in its franchise area, subject to Section 5.3.1.

2.1.3 The franchise shall be interpreted to convey limited rights and interests only as to those City rights of way in which the City has an actual interest and only to the extent and for the purposes set out in this Franchise Agreement. The grant of the franchise is not a warranty of title or interest in any right of way; and it does not provide Franchisee any interest in any particular location within the right of way. The issuance of the franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the City's rights of way covered by the franchise, including without limitation the right to perform work on its roadways, rights of way and drainage facilities, by constructing, altering, renewing, paving, widening, grading, blasting or excavating; and the right to build and install systems and facilities, with or without a franchise.

2.1.4 The grant of the franchise shall not become effective unless and until Franchisee has (a) filed an unconditional acceptance of the franchise grant, and (b) made all payments, posted all securities and guarantees, and supplied all information that it is required to supply prior to or upon the effective date of Franchise. If Franchisee fails to satisfy these obligations within thirty days of the ordinance authorizing the City to enter into this Franchise Agreement, the franchise grant shall be deemed rescinded five days after the City notifies

Franchisee in writing the obligations have not been satisfied, unless the obligations have been satisfied before the five day period has expired.

2.2 *Affiliates Must Comply.* Any affiliate of or joint venturer with or partner of Franchisee involved in the management or operation of the cable system in the City that would constitute a cable operator of the cable system is subject to the limitations of, and shall comply with the terms and conditions of, this Franchise Agreement. Franchisee shall be fully liable for an act or omission of an affiliate that controls Franchisee or is responsible in any manner for the management of the cable system that results in a breach of this Franchise Agreement or a violation of the cable ordinance, as if the act or omission was Franchisee's act or omission.

2.3 *Conflicts with the Cable Ordinance.* In the event of a conflict between the cable ordinance as it existed on the effective date of this Franchise Agreement, and this Franchise Agreement as of its effective date, the Franchise Agreement shall control except where expressly provided otherwise in this Franchise Agreement. However, although the exercise of rights hereunder is subject to the cable ordinance, the cable ordinance is not a contract. Nothing in this Section 2.3 prevents Franchisee from challenging a particular amendment to the cable ordinance as an impairment of this Franchise Agreement.

2.4 *Relation to Other Provisions of Law.*

2.4.1 The franchise issued and the franchise fee paid hereunder are not in lieu of any other required authorization, fee, charge or tax, unless expressly stated herein. Franchisee, among other things, must obtain all applicable permits, and comply with the conditions thereof, comply with zoning laws, and comply with other City codes, ordinances and regulations governing the construction of the cable system.

2.4.2 Franchisee is free to challenge any unilaterally imposed requirement of the City as unlawful and/or in excess of the City's police power, but not on the grounds that it imposes police power requirements over and above this Franchise Agreement.

2.4.3 This franchise is only for the provision of cable services. It shall not act as a bar or in any respect prevent imposition of additional or different conditions, including additional fees or authorizations related to the provision of, or the use or occupancy of the rights of way to provide, non-cable services. Nothing in this Section is intended to expand or contract the City's rights, if any, to regulate non-cable services.

2.4.4 The provisions of this Franchise Agreement shall be construed in accordance with Colorado and federal law regarding cable franchises.

2.5 *Validity* Both parties waive, as of the effective date of this Franchise Agreement, any claim or defense that any provision of this Franchise Agreement, as it existed on the effective date of this Franchise Agreement, is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any applicable law.

2.6 *Effect of Franchise Acceptance.* By accepting the franchise, Franchisee:

2.6.1 Acknowledges and accepts the City's legal right to issue and enforce the franchise;

2.6.2 Agrees that it will not oppose intervention by the City in any proceeding affecting its cable system, subject to Section 12.2.2,

2.6.3 Accepts and agrees to comply with each and every provision of this Franchise Agreement;

2.6.4. Agrees that it will not claim that any difference between this Franchise Agreement, and the franchise granted by the City to Wide Open West effective October 17, 2000, or between this Franchise Agreement and the interim permit granted by the City to US West effective January 4, 2000, is discriminatory, anti-competitive, or in any way violates any applicable law; provided, however, that Franchisee reserves the right to challenge the US West permit as discriminatory, anti-competitive or otherwise in violation of applicable law if as of December 31, 2004, US West or its successor is operating under the interim permit, and therefore has no requirement to provide cable service within the entire boundaries of the City, nor provide similar levels of capital support as Franchisee for PEG and any institutional network (as defined in the Cable Act) provided by U.S. West or its successors

2.6.5 Agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary

2.7 *Franchisee Bears Its Own Costs.* Unless otherwise expressly provided in this Franchise Agreement, all acts that Franchisee is required to perform under this Franchise Agreement or the cable ordinance must be performed at its own expense; provided that nothing contained in this Section 2.7 is intended to restrict or limit Franchisee's rights under applicable law to offset, assess, recover, or pass through costs to subscribers

2.8 *No Waiver.*

2.8.1 The failure of the City or Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the cable ordinance, or any other applicable law, shall not be deemed to constitute a waiver of such right

or a waiver of compliance or performance, unless such right has been specifically waived in writing; provided that nothing in this Section is meant to alter any renewal protections afforded by 47 U.S.C. Section 546 (d) or the operation of any applicable statute of limitations

2.8 2 Waiver of a breach of this Franchise Agreement is not a waiver of any other breach, whether similar or different from that waived. Neither the granting of the franchise nor any provision herein shall constitute a waiver, bar or expansion to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2 9 *No Monetary Recourse.* Without limiting such immunities as the City or other persons may have under applicable law, Franchisee will have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of Franchisee's construction, operation or repair of its cable system, or the activities of the City or any entity authorized by the City to use public rights-of-way or other public property.

2 10 *Severability* In the event that a court or agency of competent jurisdiction makes a final judgment that any specific provision of this Franchise Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof.

2.11 *Effect of Change in Law.* Subject to Section 2.10, in the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City

2.12 *Grant of Other Franchises* In the event that the City enters into a franchise agreement, permit, license, or other authorization with any other person or entity other than Franchisee to enter into the City's rights of way for the purpose of constructing or operating a cable system to provide cable service to any part of the franchise area, in which Franchisee is actually providing cable service under the terms and conditions of this Franchise Agreement or to which it is required to extend cable service under the provisions of this Franchise Agreement, the material provisions thereof shall be reasonably comparable to those contained herein for comparable situations, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The City shall not grant a franchise for less than the entire City, unless legally compelled to do so.

3. Transfers

3.1 *No Transfer Without City Approval.* Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust. No transfer may occur without the prior consent of the City. An application for a transfer, containing all information and complying with the requirements of applicable law, and the application fee of \$5000, which amount shall be refunded if not expended in the review process, must be filed before a request for a transfer will be considered by the City.

3.2 *Application for Transfer to be Considered in Accordance With Cable Ordinance* An application for a transfer will be considered in accordance with the cable ordinance, and the standards set forth therein as of the effective date of this Franchise Agreement shall govern the City's review of the transfer application, subject to amendments the City may adopt to comply with or reflect changes in applicable state and federal law and the specific provisions in Sections 3.3 – 3.5, below. Requests for approval of a transfer will not be unreasonably withheld.

3.3 *Mandatory Conditions – Transfers* No transfer application shall be granted unless the proposed transferee:

3.3.1 Agrees in writing that it will abide by and accept the terms of the cable ordinance, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by the transferee with such Franchise Agreement;

3.3.2 Agrees in writing to assume and be responsible for the obligations and liabilities of Franchisee, known and unknown, under this Franchise Agreement and applicable law;

3.3.3 Provides reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the proposed transferee,

3.3.4 Agrees in writing that, except as provided in Section 626 of the Cable Act concerning use of previous non-compliance evidence in renewal proceedings following a transfer, approval by the City of the transfer shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or applicable law whether arising before or after the effective date of the transfer; and

3.3.5 Posts all required bonds, securities in a manner to ensure that there is no gap in coverage

3.4 *Change in Control of Franchisee.* No application for a change in the control of Franchisee or its parents will be granted unless:

3.4.1 Franchisee unconditionally reaffirms that it will abide by and accept the terms and conditions of the cable ordinance, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by Franchisee with such Franchise Agreement;

3.4.2 Franchisee reaffirms that it remains responsible for all of its obligations and liabilities, known and unknown, under the Franchise Agreement and applicable law for all purposes, including but not limited to renewal under Section 626,

3.4.3 Franchisee and the entity that will own and control Franchisee provide reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations,

3.4.4 Franchisee and the entity that will own and control Franchisee agree that the approval of the change of control by the City shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or applicable law, whether arising before or after the change of control,

3.4.5 Required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change in the same as a result of the change of control

3.5 *Intra-Corporate Transactions*

3.5.1 The parties find it appropriate to exempt certain intra-corporate transactions from the transfer approval requirement, as permitted by the cable ordinance. No City approval shall be required in connection with any addition, deletion or consolidation of wholly-owned subsidiaries in the ownership chain above Franchisee, so long as the conditions in Section 3.5.2 are met.

3.5.2 To qualify for exemption from transfer approval, the following conditions must be met:

3.5.2.1 Franchisee and the party being added to the chain of control unconditionally reaffirm that Franchisee will abide by and accept the terms and conditions of the cable ordinance and this Franchise Agreement,

3.5.2.2 Franchisee and the party being added to the chain of control reaffirm that Franchisee shall be responsible for all of Franchisee's obligations and liabilities, known and

unknown under the Franchise Agreement and applicable law for all purposes, including but not limited to renewal under Section 626;

3 5.2.3 Required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change in the same as a result of the transaction;

3 5.2.4 The Franchisee and party being added to the chain of control must agree in writing that there shall be no waiver or release of any right of the City (whether such right arises before or after the transaction) under this Franchise Agreement or applicable law, as a result of the transaction; and

3 5.2.5 The party being added to the chain of control must be a wholly-owned subsidiary of Comcast Cable Holdings, LLC, and Comcast Cable Holdings, LLC must agree to guarantee unconditionally the performance of the Franchisee and party being added to the chain of control

4. Franchise Fee

4.1 *Payment to City.* Franchisee shall pay the City a franchise fee in an amount equal to five percent of gross revenues as that term is defined in the cable ordinance as of the effective date of this Franchise Agreement, subject to amendments the City may adopt to comply with changes in applicable state and federal law. Fees or charges collected by Franchisee for PEG, for sales taxes, and for user fees assessed by the FCC, shall not be counted as part of gross revenues. Gross revenues shall include revenue received by any entity other than Franchisee where necessary to prevent evasion or avoidance of the obligation to pay franchise fees on all cable services.

4.2 Cable Modem Fees

4.2.1 In a Declaratory Ruling and Notice of Proposed Rulemaking released March 15, 2002, the FCC stated that cable modem service is not a cable service under the Communications Act of 1934, as amended, and initiated a rulemaking to, among other things, examine States' and local governments' authority to regulate cable modem service and the scope of the FCC's jurisdiction to regulate cable modem service. If the FCC's ruling that cable modem service is not a cable service is modified in a final, non-appealable decision by the FCC or a court of competent jurisdiction to the extent that cable modem service is determined to be a cable service, then the definition of gross revenues set forth in Section 11-6-2, B.R.C. 1981, shall include revenues Franchisee receives from providing cable modem services in the franchise area in accordance with the FCC's ruling. If payments are made pursuant to this Franchise Agreement as provided for in this Section, this Franchise Agreement will be interpreted to grant rights and authorizations to use and occupy the public rights of way to provide the cable modem service on which the fee is paid.

4.2.2 Nothing in the Franchise Agreement shall be construed as a waiver of any right the City may have to assess a fee on Franchisee's provision of cable modem service consistent with applicable law

4.3 *Not in Lieu of Any Other Assessments, Tax or Fee* The franchise fee is in addition to all other fees, assessments, taxes or payments that Franchisee may be required to pay under applicable law, subject to any limitations set forth in 47 U.S.C. §542.

4.4 *Payments.* Franchise fees shall be paid in accordance with the schedule set forth in the cable ordinance, and late payments shall be subject to the additional charges set forth in the cable ordinance.

4.5 *No Accord or Satisfaction* No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under the cable ordinance or for the performance of any other obligation of Franchisee.

4.6 *Payment Records.* Subject to Section 9 of this Franchise Agreement, the City shall have the right, from time to time, and upon reasonable advance written notice, to inspect, audit, copy and review all books and records of Franchisee reasonably necessary to the determination of whether gross revenues and franchise fees have been accurately computed and paid

4.7 *Holdover Term.* During any holding over after the scheduled date for expiration or other termination of the franchise, without the consent of the City, Franchisee shall continue to pay the franchise fee as set forth above, in addition to honoring all other provisions of this Franchise Agreement.

5. Construction Provisions

5.1 *Provision of Service: Franchise Area and Charges for Plant Extensions.*

5.1.1 *Franchise Area* Franchisee's franchise area shall be the corporate limits of the City of Boulder, as they may be altered during the franchise term.

5.1.2 Except where Franchisee is unable to obtain required easements or permits and subject to Section 5.1.4, Franchisee shall extend cable service to any residence within the City as of the effective date of this Franchise Agreement upon the request of a potential subscriber at its then-prevailing installation charge for such service. There shall be no charge for extending plant to a point where service can be provided with a standard drop, or (if closer) to a point on the property line of the potential subscriber from which service can be provided to the potential

subscriber. For areas where Franchisee has not extended its cable system as of the effective date of this Franchise Agreement, the foregoing will apply after January 1, 2004.

5.1.3 For non-residential locations in the City and for areas annexed to the City after the effective date of this Franchise Agreement, except where Franchisee is unable to obtain required easements or permits and subject to Section 5.1.4, Franchisee shall provide service upon request at its then-prevailing installation charge, but may charge for any required plant extension as provided in this paragraph. Franchisee shall extend its plant at no charge so that it can provide service with a standard drop where there is either a minimum density of twenty-five residential units per mile or where fifteen commercial locations per mile agree to subscribe to Franchisee's cable service for one year at commercial rates. Where these standards are not satisfied, Franchisee may condition service extensions at the then-prevailing charge upon the person or persons requesting service agreeing to pay a *pro rata* share of the cost of extending the plant to a point where service can be provided with a standard drop. For purposes of this subsection, in areas where Franchisee has not constructed cable system lines as of the effective date of this Franchise Agreement, each dwelling unit within a multiple dwelling unit ("MDU") will count as a residential unit if and only if Franchisee can obtain access to the MDU on reasonable terms and conditions. Notwithstanding the foregoing, Franchisee may charge any potential subscriber located in a mall or strip mall for any line extension greater than 100' required to cross a parking lot to provide cable service.

5.1.4 Franchisee is not required to provide cable service to any

5.1.4.1 occupant of a mall or strip mall as set forth in Section 5.1.3 where such occupant is unwilling to pay its portion of any applicable line extension costs,

5.1.4.2 commercial occupant of commercial structures above the first floor, where inside wiring necessary to provide the cable service is not already present, or where the owner or occupant is unwilling to install or pay for the inside wiring necessary to provide the cable service,

5.1.4.3 occupant of unlawful dwelling units, or

5.1.4.4 potential subscriber in a building where Franchisee is denied access

5.1.5 Franchisee must extend its plant so that service may be provided to the subscriber at the lowest cost to the subscriber that meets Franchisee's technical standards unless a subscriber directs otherwise. If Franchisee contends that it cannot obtain the easements necessary to provide service to a particular location, Franchisee shall have the burden of proving that it cannot obtain those easements.

5.1.6 Nothing in this Section 5.1 shall be construed to prohibit experimental or "test bed" services being extended to a segment of the community during the period of the experiment

5.1.7 Except as lawful rate orders may otherwise provide, the "then-prevailing installation charge" is the lowest lawful charge that would apply at any given time to a particular class of users. For example, if free installation is then being provided for installations involving aerial drops of 125 feet or less, any person requesting cable service that could be served by an aerial drop of 125 feet or less and anyone to whom Franchisee is required to extend services under Sections 5.1.1 and 5.1.2 could take advantage of that installation offer. Similarly, if Franchisee has established a lawful fee for installations that recovers additional costs for sidewalk and other pavement cuts which is charged to persons throughout the City, that charge may be applied on a non-discriminatory basis. If applicable law permits, nothing in this Franchise Agreement prohibits Franchisee from establishing separate charges for separate classes of drops, such as, for example, underground and aerial drops, so long as drop costs are treated consistently. Notwithstanding the foregoing, Franchisee may not charge for a drop crossing a paved portion of the roadway, not to exceed sixty feet, to provide service, except for good cause shown to the City

5.1.8 Where electric and telephone service is currently above ground, but a subscriber or potential subscriber requests to locate its cable drop underground, Franchisee shall locate the drop underground, but in addition to the then-prevailing installation charge, Franchisee may charge the subscriber for the actual difference in cost of installing the underground, rather than an aerial drop, including the costs, if any, of any easement necessary for such underground cable drop

5.1.9 Franchisee shall construct and extend its cable system to low income areas at least as quickly as it is extended to higher income areas.

5.2 *Construction Standards* Franchisee agrees that:

5.2.1 The construction, operation, and repair of the cable system shall be governed by the cable ordinance, and in all events shall be performed in accordance with all applicable laws. In addition, without limiting the foregoing, at a minimum, Franchisee shall comply with its Manual of Construction Procedures in effect as of the date of the Franchise Agreement, or such other manual as the City may accept in lieu thereof, IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law)

5.2.2 Subject to this Section 5.2.2, whenever feasible, Franchisee shall install its cable system underground in order to avoid damage from the unique wind storms to which the City is subject. Franchisee shall, at no cost to the City or adjacent subscribers, underground its cable system when poles to which Franchisee's facilities are attached are no longer in use for electrical or telephone plant; provided, however, that Franchisee waives no right to reimbursement from any funds raised for undergrounding pursuant to C.R.S. §29-8-101, *et seq.* Franchisee does not waive the right to claim the City is obligated to raise funds pursuant to C.R.S. §29-8-101, *et seq.* for any particular undergrounding project. Franchisee shall exercise its best efforts to protect its cable system from flood hazards, by undergrounding creek crossings and burying them deeply enough and with sufficient protection to avoid damage in a 100-year flood event. But all of Franchisee's cable system as of the effective date of this Franchise Agreement is acceptable until portions are replaced, when the criteria of this Section shall apply to the replaced portions.

5.2.3 Franchisee shall install, locate, relocate and remove its cable system in accordance with the cable ordinance and all other applicable laws, including, without limitation, all lawful street cut fees. Franchisee shall not place or maintain its cable system, including any poles or other structures, in public rights of way or on private property except in strict accordance with the requirements of the cable ordinance and all other applicable laws.

5.2.4 Franchisee shall restore and replace public and private property that is disturbed or damaged during the construction, operation, maintenance or repair of the cable system within the times and in the manner provided in the cable ordinance. Franchisee shall compensate any entity, only to the extent of any injury or damage caused by Franchisee, whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation, maintenance or repair of the cable system where the property is not fully restored by Franchisee. This Section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee.

5.2.5 In an emergency, or where the cable system creates or is contributing to an imminent danger to public health, safety, or property, the City may remove, relay, or relocate any or all parts of the cable system without prior notice; however, the City will make reasonable efforts to provide prior notice. The City is not responsible for any loss or expense associated with its removal, relaying or relocation of Franchisee's cable system under this Section, nor is it responsible for restoring the property to its prior condition after the emergency.

5.3 *Continuity of Service.*

5.3.1 Subject to the provisions of Section 5.1, concerning line extensions, it is the right of each subscriber in the City to receive all available cable services from Franchisee as long as the subscriber's financial and other obligations to Franchisee are satisfied. Nothing in this Section

shall limit the right of Franchisee to deny cable service for non-payment of previously provided cable services, refusal to pay any required deposit, theft of cable service, damage to Franchisee's equipment, or abusive and/or threatening behavior toward Franchisee's employees or representatives. Abusive behavior includes, but is not limited to, use of fighting words or behavior taken by the customer that creates a risk or a reasonable expectation that Franchisee's employee may be harmed. In the event a customer complains to the City that Franchisee has unreasonably denied cable service, (a) Franchisee will inform the City of the precise nature of the situation; (b) the City will provide the customer an opportunity to submit a response to the allegations, and (c) Franchisee will allow for a determination by the City as to whether or not the customer shall continue to be denied service. The City's consent to withhold service from an abusive customer will not be unreasonably withheld.

5.3.2 Franchisee shall ensure that all subscribers receive continuous uninterrupted cable service. At the City's request, Franchisee shall operate its system for a temporary period (the "transition period") following the termination of its franchise or any transfer, as necessary to maintain service to subscribers, and shall cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and to build a replacement system, and shall not be longer than thirty-six months, unless extended by the City for good cause. During the transition period, Franchisee will continue to be obligated to comply with the terms and conditions of this Franchise Agreement and applicable laws.

5.3.3 The City shall be entitled to, at its option, operate the cable system or designate another entity to operate the system or revoke the franchise, if:

5.3.3.1 Franchisee, for any twenty-four hour period, willfully and without cause, refuses to provide cable service in accordance with this Franchise Agreement over a substantial portion of the City;

5.3.3.2 Franchisee abandons its system.

5.3.4 Nothing in this Section 5.3 shall be read to limit any rights the City may have to purchase the cable system.

5.4 *Rights Upon Franchise Termination or Revocation.* If the City revokes the franchise, or the franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise Agreement or under applicable law:

5.4.1 The City may require Franchisee to remove its facilities and equipment at Franchisee's expense. If Franchisee fails to do so within a reasonable period of time, the City may have the removal done at Franchisee's expense, subject to any right of abandonment that may be provided for under applicable law.

5.4.2 In the event of a lawful non-renewal of the franchise, if the City acquires ownership of the cable system or effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at fair market value, with no value assigned to the franchise itself. In the event of a lawful revocation, if the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price. The terms “equitable price” and “fair market value” shall be interpreted in accordance with 47 U.S.C. §547.

5.5 *Notice of Use.* At least annually Franchisee will notify the City of any agreements for third parties to use of its poles and conduits. Copies of agreements for use of Franchisee’s conduits or poles in public rights of way will be made available for review upon the City’s request subject to any confidentiality restrictions in such agreements.

5.6 *Contractors and Subcontractors* Franchisee shall be responsible for the acts and omissions of all of its contractors and subcontractors as if the work were performed by Franchisee itself, and shall ensure that all work is performed in compliance with and shall correct such acts or omissions that violate this Franchise Agreement, or any ordinance, law and regulation of the City, and shall be jointly and severably liable for all damages and correcting all damages by them as if Franchisee performed that work itself. Franchisee shall ensure that each contractor and subcontractor complies with the requirements of this Franchise Agreement and any ordinance and regulation of the City in the course of constructing, operating, maintaining and repairing the cable system. This Section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee. Franchisee shall ensure that any contractor or subcontractor used for work on construction, operation, or repair of the cable system is properly licensed under laws of the State of Colorado and all applicable City ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise Agreement and applicable law if the work were performed by Franchisee. Franchisee shall institute procedures adequate to ensure that the work performed by its contractors and subcontractors complies with the requirements of this Franchise Agreement and any applicable laws.

6. System Facilities, Equipment, and Services

6.1 System Capabilities.

6.1.1 Franchisee shall maintain an activated two-way capable cable system so that all active components on the subscriber network have a rating of no less than 860 MHz and all passive components have a rating of no less than 1 GHz.

6.1.2 Franchisee will maintain a fiber to the node architecture, with an average node size of no greater than 1,500 subscribers per node. Franchisee reserves the right to change node size in accordance with industry standards.

6.1.3 The entire cable system must be two-way activated and must include the facilities and equipment (except customer premises equipment) required to provide broadband interactive cable services.

6.1.4 Franchisee shall maintain a redundant fiber optic link or equivalent technology between the Denver headend and the Boulder secondary hubsite in order to prevent catastrophic service outages to the entire Boulder franchise area due to vandalism, storm damage, construction related breaks, or other interruptions in one of the fiber trunk pathways. If equivalent technology is used, the link must have all the characteristics, including without limitation the reliability, scalability, upgradeability, ease of upgradeability and scalability, capacity and security that would be afforded by a dedicated fiber optic link.

6.1.5 There must be reliable, continuous, auto-start back-up power at the headend. Back-up power shall also be provided at each node as activated through the use of backup power supplies that are suitably sized and located so as to carry their individual loads for a minimum of three hours. In addition, to the extent technically possible, cable system active components shall be designed to parallel the power company grid such that a loss of power at a particular active component would likely be accompanied by a loss of power to the majority of homes served by that component of the cable system.

6.1.6 The cable system must include the facilities and equipment required to provide full system status monitoring of power supplies at the nodes as activated. The status monitoring equipment must, at a minimum, permit Franchisee to identify where and when power outages affecting the node have occurred, and when and where the cable system has switched to battery back-up power supplies.

6.1.7 Franchisee must install and maintain facilities and equipment (including without limitation modulators, antennae, amplifiers and other electronics) that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the system shall include components such that a signal received at the headend in color may be received by a subscriber in color, and a stereo signal in stereo). Facilities and equipment shall be installed and operated so that subscribers can receive closed-captioning and secondary audio. Any program-related data encoded in vertical or horizontal blanking intervals, secondary audio signals, and closed-captioned signals must be available to all customers who subscribe to the services associated with such signals.

6.1.8 Franchisee shall comply with all applicable laws concerning system compatibility with subscribers' consumer electronics equipment. Franchisee shall provide the facilities and equipment necessary to make its services (including its customer services) reasonably accessible to persons with disabilities. For example, Franchisee should employ TTY or similar technologies to permit communication between the hearing-impaired community and cable system representatives

6.1.9 The system facilities and equipment must be capable of continuous twenty-four hour daily operation, without severe material degradation of signal, except during extremely inclement weather, or immediately following extraordinary storms which adversely affect utility services or which damage major cable system components

6.1.10 The cable system must utilize facilities and equipment generally used in high-quality, reliable, systems of similar design (except where inconsistent with the specific requirements of this Franchise Agreement). The cable system must have the level of reliability required to support a high-quality, broadband information service

6.1.11 Franchisee shall provide as-built maps of the cable system, without notation of electronic components, in a publicly available electronic format compatible with City geographic information systems and other City data systems. The City shall assert protection of confidential commercial data from disclosure under the Colorado Public Records Act, Section 24-72-204, C.R.S.

6.2 *Transmission Technologies.* Franchisee may use any transmission technology (as that term is defined in federal law), provided that the cable system is constructed and maintained so that it will have characteristics that in all relevant respects meet or exceed the characteristics of the cable system described in Section 6.1. Franchisee affirms that it has constructed a cable system that meets or exceeds all the requirements of Section 6.1. If City determines that Franchisee has not constructed the cable system as required by Section 6.1 or has failed to maintain the cable system as required by Section 6.1, and the City determines that the cable system does not or is not likely to satisfy Section 6.1, the City may declare a breach of the franchise, and, in addition to exercising any other remedy available to it, order Franchisee to upgrade the cable system by a time specified by the City, and require such securities as are necessary to ensure the work is timely performed, unless the City determines that the cable system as actually constructed meets or exceeds the following characteristics: (a) the cable system must be highly reliable compared to the most modern cable systems being constructed; (b) the cable system must have adequate, initial activated capacity and be designed so that it can deliver additional bandwidth to and from each subscriber, without substantial delay or construction; (c) the cable system must be able to respond to changing subscriber needs and interests with the minimum delay or disruption, (d) the cable system must be designed so that power outages affect, to the extent possible, only those subscribers who are not receiving power at their home, and (e) the cable system must be designed so that the amount of required maintenance, and

the mean time to repair, is minimized.

6.3 *Emergency Alert System.* Within six months of City's written request, at City's cost, Franchisee must install and maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert that reaches only the City of Boulder, while continuing to allow participation in regional and national emergency alert systems. If such a system is installed at the request of the City, the City agrees that it shall assume all risks associated with operating its EAS and shall be solely responsible for all liability arising out of operating the Boulder-specific EAS. The City will operate the Boulder specific EAS in accordance with all applicable state and federal law. The system must be designed and maintained so that local officials designated by the City can activate the system remotely without the assistance of Franchisee, using a telephone and secure password or by such other technical means as the City may approve. The system must be designed and maintained so that the designated officials, from a touch-tone telephone, can activate a pre-recorded text message, and at such officials' option, an accompanying live audio voice message for up to two minutes. The City and Franchisee shall meet periodically to discuss operational procedures for use of the emergency alert system. As part of those discussions, the parties may agree on alternative capabilities and activation procedures for the emergency alert system. In addition, Franchisee shall provide emergency capabilities required under other applicable laws.

6.4 *Parental Controls.* In addition to satisfying any obligations that it has under applicable law to provide parental control devices, or otherwise block programming on the cable system, Franchisee shall ensure that any system for ordering movies or other pay-per-view programming is designed, through use of systems such as PIN number systems, to prevent children from ordering programming without parental consent. Franchisee shall avoid the use of channels 3 and 4 for analog preview channels that advertise adult programming.

6.5 *Support Equipment and Facilities.*

6.5.1 Franchisee must have sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and the trained and skilled personnel required so that Franchisee complies with each and every requirement of applicable law, including applicable customer service requirements, technical standards, maintenance standards and requirements for responding to system outages. This includes the facilities, equipment and staff required to (a) properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and (b) be able to quickly respond to customer complaints and resolve system problems.

6.5.2 Franchisee must install and maintain equipment necessary to measure its performance with applicable customer services standards that the City may adopt from time to time; except that Franchisee may obtain relief temporarily from this requirement if it shows that

(a) it has a high level of subscriber satisfaction; (b) there are alternative, adequate ways to review its performance; or (c) for other good cause shown.

6.5.3 Franchisee must ensure that its headend has adequate space, and is otherwise properly designed in order to accommodate the equipment and facilities necessary to meet its obligations under this Franchise Agreement.

6.6 *Technical Standards.* The cable system must meet or exceed the technical standards set forth in 47 C.F.R. §76.601 and any other applicable standards, as amended from time to time, provided that nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law

6.7 *Future Upgrades* It is Franchisee's responsibility to make such improvements to its cable system as are necessary so that the cable system performs as promised as subscribers to services are added.

6.8 *Testing Requirements.*

6.8.1 Franchisee shall perform acceptance tests on each upgraded and newly constructed area prior to subscriber connection. The tests must demonstrate that the system components are operating as expected and that there is no signal degradation on PEG channels from origination points to subscribers. Franchisee shall have the obligation, without further notice from City, to take corrective action if any segment is not operating as expected

6.8.2 Franchisee conducts the semi-annual performance testing required by the FCC in January/February and July/August of each year. If the City gives notice to Franchisee by December 15 prior to the winter test period or by June 15 prior to the summer test period, the City may observe Franchisee's Proof-of-Performance test required by the FCC. Franchisee shall provide the proof of performance test results promptly to the City upon request.

6.9 *Inspection* The City shall have the right to inspect the cable system during and after its construction to ensure compliance with the cable ordinance, this Franchise Agreement, and applicable law, and may require Franchisee to perform additional tests based on the City's investigation of cable system performance or on subscriber complaints.

6.10 *Interconnection.*

6.10.1 Franchisee shall, in accordance with this subsection, interconnect the access channels of the cable system with any other contiguous cable system upon the directive of the City. Interconnection of channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The City shall not direct interconnection except under circumstances where it can

be accomplished without undue burden or excessive costs to the subscribers. Franchisee shall not be required to interconnect with a cable system unless the operator of that system is willing to do so and pays for its own cost of constructing and maintaining the interconnect up to the demarcation point. Franchisee shall continue the interconnections with systems serving Boulder County as of the effective date of this Franchise Agreement.

6.10.2 Franchisee shall only be required to interconnect access channels with another cable or open video system in the City in the event that the City determines in its sole discretion that it would be economically burdensome to its subscribers to construct and maintain return lines directly from the origination point(s) of the access channel(s) versus interconnecting with Franchisee. In the event Franchisee receives a directive from the City to interconnect with another cable or open video system in the City, Franchisee shall immediately initiate negotiations with the other affected cable or open video system or systems and shall report to the City the results of such negotiations no later than sixty days after such initiation. The receiving cable or open video system shall be responsible for Franchisee's costs in constructing and maintaining the interconnect. If the parties cannot reach agreement on the terms of the interconnect, including compensation and timing, the dispute shall be submitted to the City for determination and resolution. Additionally, Franchisee shall only be required to interconnect with a receiving cable or open video system if the receiving cable or open video system is providing similar support for access as required of Franchisee pursuant to this Franchise Agreement. This obligation shall continue until the City determines that it is no longer economically burdensome to its subscribers for other affected cable system or systems to construct and maintain lines directly from the origination link of the access channels.

6.11 *Free Cable Service to Certain Facilities.* Franchisee shall, at no cost to the City, continue to provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, and public libraries where such service is provided as of the effective date of this Franchise Agreement, as shown on Exhibit A. In addition, Franchisee shall provide, at no cost to the City or other entity, one outlet of Basic and Expanded Basic Service to owned or leased and occupied City buildings, schools and libraries not included on Exhibit A, upon request if the drop line from the feeder cable to such building does not exceed a standard drop, or if the City or other entity agrees to pay the incremental cost of such drop line in excess of a standard drop. For purposes of the previous sentence, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute cable services throughout such buildings; provided such distribution can be accomplished without causing cable system disruption and signal leakage and general technical standards are maintained. Such outlets may only be used for lawful purposes. Except as shown on Exhibit A, this obligation to provide free cable service shall not extend to public areas of City buildings where Franchisee would normally enter into a commercial contract to provide such cable service (e.g., golf courses, airport restaurants and concourses, and recreation center work-out facilities).

6 12 *Provision of Broad Categories of Services.* This paragraph shall be interpreted consistent with the limitations set forth in 47 U.S.C. §544(b)(2)(B). In addition to such other service requirements as may be contained in this agreement, Franchisee agrees to provide at least twelve locally-available FM radio stations, or if lower, the number of locally available FM radio stations from which Franchisee can obtain retransmission consent at no cost (the term costs refers to a payment made to an FM station for the right to carry the station's signal, and does not include copyright payments that may be required). The availability of FM radio service on the cable system shall be publicized, and the channel line-up of such FM stations shall be included in all channel lineup publications.

6 13 *Uses of System.* Upon request, Franchisee shall advise the City of all active uses of the system, for both entertainment and other purposes, such as data transmission, local area networks, and voice transmission. Nothing in this Section 6 shall be construed to convey any regulatory power to the City. If Franchisee believes that City is exceeding its franchise authority with such a request, Franchisee may seek appropriate redress.

7. Channels and Facilities for PEG Use

7 1 PEG Use

7 1 1 Franchisee shall activate and make available public, educational and governmental ("PEG") channels to each subscriber on the subscriber network as specified in this Section 7. The channels provided under this Section are subject to Franchisee's rights to use the channels for the provision of services when they are not being used for their intended purposes

7 1 2 The management of the PEG channels is the responsibility of the City. The City may designate an entity or entities to manage all or any part of the PEG channels (The entity or entities so designated are referred to as a "designated access provider"). The City may designate designated access providers; it may designate channels provided under this Franchise Agreement for public, educational, government or combined PEG use. Nothing herein shall prevent a designated access provider from allowing PEG capacity designated for a particular PEG use to be used for other PEG uses.

7 1.3 PEG channels shall be provided on the basic service tier (except as the City and Franchisee may otherwise agree), or if there is no basic service tier, as part of the service provided to any subscriber. If channel choices are selected by a menu, PEG channels must be displayed equally as prominently as commercial channel choices offered by Franchisee. It is the responsibility of the designated access providers to provide the necessary channel information to Franchisee or its designated menu programmer in a timely manner. If it is technically feasible, at City's cost, Franchisee will also allow PEG program information to be displayed on any menu

listings offered by Franchisee that include such detail of commercial channels, provided that Franchisee directly controls such menu listings or can cause such listings to be included. In such event, it will be the responsibility of the designated access providers to provide the program information to Franchisee or its designated menu programmer in a timely manner.

7 1 4 It is the responsibility of Franchisee to transmit PEG signals from points designated by the City, and to deliver them without alteration in content or material degradation in quality to each subscriber, in a form and manner so that the subscriber may receive the signals without additional equipment or cost beyond that required to receive the level of cable services to which the subscriber has subscribed.

7 1 5 Except as expressly permitted by applicable law, Franchisee shall not exercise any editorial control over the content of communications on the designated PEG channels (except for such communications as Franchisee may produce and cablecast on such channels). Subject to all other limitations of this Franchise Agreement, the PEG channels may be used for any communication, in any form, the full signal provided must be carried

7 1 6 PEG channels may not be used to cablecast anything prohibited by federal law. PEG channels may not be used to cablecast commercial matter. "Commercial matter" means time sold or used to propose a commercial transaction or for the express purpose of selling a commercial product or service. Nothing in this Section prevents the levy of a fee to defray costs of the City or a designated access entity associated with the operation, activation or maintenance of PEG channels, facilities and equipment. By way of example and not limitation, the parties do not intend to limit sponsorship announcements comparable to those that might be carried on a non-commercial broadcast station, or to prevent schools from charging course fees, and then delivering the course via the PEG channels; or to solicit financial support for the provision of PEG access by designated access providers and for charitable, educational or governmental purposes. The City agrees that it will not use or authorize use of its designated educational and governmental access channels for any for-profit, commercial purposes by the City or third parties. Franchisee shall have the right to audit the use of such facilities to ensure compliance with this paragraph, which shall be reasonably construed in accordance with Franchisee's practices in other Denver-area jurisdictions. Use by City enterprise funds and agencies is not "for profit" or "commercial" solely because the enterprise or agency has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or the City. Nothing prevents the City from authorizing charges to users or viewers to pay for such non-commercial services, such as fees for instructional programming or charges to recover the cost of special use equipment, or as the City may be required to charge under applicable law.

7 1 7 *Access Channels.*

7.1.7.1 Subject to the provisions of Sections 7.1.9.2 – 7.1.9.9, on and after the effective date of this Franchise Agreement, Franchisee shall provide four downstream 6 MHz PEG channels: one public access channel, one educational access channel and two local government access channels. The City may require Franchisee to activate an additional 6 MHz channel for PEG use, up to a total maximum of five channels under the procedures specified below.

7.1.7.2 If a designated access provider believes that additional PEG channels are needed, the designated access provider may file a request with the City Manager. The City Manager will determine whether additional PEG channels should be activated, considering, among other factors, the following: the community's needs and interests, the utilization of the existing channels, the plans of designated access providers for utilizing the additional channels, the interest of the community in additional PEG use of the cable system, whether it is feasible for designated access providers to achieve their goals by clustering PEG programming into blocks of time so that the channel space can be compatibly shared between multiple designated access providers, whether several designated access providers should combine their programming onto a single access channel, and the impact of the activation of the additional channels on existing programming.

7.1.7.3 Should the City Manager in his or her sole discretion find that activation of additional channels is justified, then the City Manager shall provide his/her decision in writing, and Franchisee shall activate the channels within ninety days of receiving the decision. Franchisee may appeal the decision of the City Manager to the City Council within thirty days of the date of the City Manager's decision, and if it does so, may delay activation of the channels. The City Council, after reviewing the decision of the City Manager, and after a public hearing, may in its discretion approve, modify or reject the decision of the City Manager in its sole discretion. If the City Council orders Franchisee to activate additional channels, the channels shall be activated within sixty days of the date the City Council makes its decision. The decision shall be final and unappealable.

7.1.7.4 Franchisee and the City agree that it is their mutual goal to effectively and efficiently use PEG channels. Franchisee shall be permitted to use underutilized time on PEG channels, as provided below.

7.1.7.5 If Franchisee believes that any PEG channel has underutilized time, it may file a request with the City Manager to use that time. In response to the request, the City Manager will consider a combination of factors, including without limitation the community's needs and interests, the utilization of the existing channels, the plans of the designated access provider for utilizing the channels (including whether the underutilized capacity is being used for intermittent programming that could otherwise not be easily provided on the same basis), if the channels are being underutilized, the reasons for underutilization, whether it is feasible for the designated access providers to achieve their goals by clustering PEG programming into blocks of time so that the channel space can be compatibly shared between multiple designated access providers, whether

several designated access providers should combine their programming onto a single access channel, and whether Franchisee is in full compliance with its PEG obligations.

7.1.7.6 The City Manager shall render a decision regarding the request for utilization within sixty days of receiving the request. Should the City Manager find, in his or her sole discretion, that a PEG channel or a portion of a PEG channel may be used by Franchisee, then Franchisee may begin using such time ninety days after receipt of the decision. Franchisee's request shall not be unreasonably denied. Any permission granted pursuant to this subsection for use of a PEG channel or a portion thereof shall be considered temporary.

7.1.7.7 At such time as a designated access provider believes that it wishes to utilize the PEG channel time currently used by Franchisee pursuant to this subsection, a designated access provider may request that the City Manager return such channel or portion of the channel for PEG use. In response to the request, the City Manager will consider a combination of factors, including without limitation the community's needs and interests, the utilization of the existing channels, the plans of the designated access provider for utilizing the channels, the impact of Franchisee use on PEG use of the cable system, whether it is feasible for the designated access providers to achieve their goals by clustering PEG programming into blocks of time so that the channel space can be compatibly shared between multiple designated access providers, and whether several designated access providers should combine their programming onto a single access channel.

7.1.7.8 The City Manager shall render his/her decision regarding the matter within sixty days of receiving the request. Should the City Manager find in his or her sole discretion that the PEG channel or portion of the PEG channel should be returned for PEG use, then Franchisee shall surrender the channel or portion of the channel, as directed, within ninety days of receiving the decision. The designated access provider's request shall not be unreasonably denied.

7.1.7.9 The decision of the City Manager shall be final and unappealable as to both Franchisee and designated access providers. Franchisee may not request a return of a channel, or any portion of a channel within two years of the initial activation of the PEG channels required by Section 7. The City Manager may deny Franchisee the right to utilize all or a portion of a PEG channel, or revoke on thirty days notice an authorization to utilize all or a portion of a PEG channel if Franchisee is not in full compliance with its PEG obligations.

7.1.7.10 In addition to the maximum five channels required above, (a) if Franchisee does not carry C-SPAN as part of its commercial service, and C-SPAN is available for carriage, Franchisee will provide an additional PEG channel for the carriage of C-SPAN. If technically feasible, Franchisee will downlink and insert C-SPAN on the appropriate PEG channel; (b) if Franchisee does not carry C-SPAN2 as part of its commercial service, and C-SPAN2 is available for carriage, Franchisee will provide an additional PEG channel for the carriage of C-SPAN2. If technically feasible, Franchisee will downlink and insert C-SPAN2 on the appropriate

PEG channel, and (c) if Franchisee does not carry the Radio Reading Service of the Rockies as part of its commercial service, and it is available for carriage, Franchisee will provide an FM band PEG channel for carriage of the service. Any additional PEG channels provided under this Section 7.1 7.10 (a) or (b) will be offered on the Basic or Expanded Basic Service tier.

7.1 7.11 Franchisee and the City will cooperate to help promote the use and viewership of the PEG channels. Consistent with this cooperative approach, except where required by federal law, Franchisee shall not change PEG channel locations without advance notice to the City. Franchisee will also cooperate with other cable systems and open video systems in the City to attempt to develop uniform channel locations for the PEG channels. If Franchisee determines that a change to a PEG channel assignment is necessary, it shall provide the City with a minimum of sixty days notice, and use its best efforts to provide 120 days notice, prior to the time that public, educational, and governmental access channel designations are changed. Franchisee shall pay all costs associated with replacing or adjusting equipment, as necessary for the channel redesignation. In addition, Franchisee shall pay the reasonable cost of replacing materials and supplies, changing signs and remarketing the channels up to a maximum of fifty cents (\$0.50) per subscriber per channel changed. Any such amounts paid by Franchisee may be added, at Franchisee's discretion and in accordance with the applicable FCC regulations, to the price of cable services and collected from such subscribers as "external costs" as such term is required by applicable law. Franchisee, at Franchisee's expense, shall place the City's notices of the channel change on its regular monthly billings, upon the City's request.

7.2 *Return Lines for PEG Use.*

7.2.1 Franchisee shall maintain the activated upstream links set forth in Exhibit B. Franchisee agrees that it will provide and maintain activated capacity to enable transmission of a second PEG channel from each of the PEG facilities located at 1000 Canyon Blvd and 2590 Walnut

7.2.2 The City or any designated access provider may upgrade the connections at its cost. The City shall provide Franchisee of its intent to upgrade its connections in writing. Franchisee shall provide reasonable access to and space at its facilities to accommodate the PEG return line upgrade. The City may use the PEG capital funds provided in this Franchise Agreement for any such upgrade costs. Franchisee shall upgrade such requested connections in a timely manner

7.2.3 If the headend is moved or replaced, Franchisee shall transfer the link(s) to the new location (including, without limitation, moving terminal equipment and splicing fiber, as necessary)

7.2.4 The City may request that Franchisee construct new return lines for PEG use. Such return lines shall be constructed at the City's cost, however, the City may use the PEG capital

funds provided in this Franchise Agreement for any such costs. Franchisee shall construct such requested return lines in a timely manner.

7.3 *Support for PEG Access.*

7.3.1 Franchisee shall continue to collect and remit the current \$ 0.50 (50 cents) per month per residential and commercial subscriber until a new rate is made effective as set forth below. Following City Council decision, made by motion, Franchisee shall provide the City with up to \$0.75 (75 cents) per month per residential and commercial subscriber for PEG use, capital facilities and equipment support. Any change in the amount of this support will become effective sixty days after Franchisee receives written notice of the City's Council decision. Additional increases may be required by ordinance (including a mandatory public hearing) no sooner than 42 months after the effective date of this Franchise Agreement, to an amount over \$0.75 (75 cents), but in no event will the amount exceed a total of \$1.00 (one dollar) per residential and commercial subscriber per month and such amount must be applicable to all franchised cable operators in the City. Any change in the amount of this support will become effective sixty days after Franchisee receives written notice of the City Council's decision. No fees shall be charged on gratis accounts. The City shall be solely responsible for all liability to any third party arising out of the City's use of PEG use capital funds that will be collected and paid to the City in accordance with this Section. Any payment under this Section shall be due on a quarterly basis, payable concurrently with franchise fees for such quarter.

7.4 *Miscellaneous PEG Requirements*

7.4.1 Upon reasonable advance notice, but no more often than once per calendar year, Franchisee will provide the City with an insert space in subscribers' cable bills to promote PEG programming. Franchisee shall provide the City with the printing specifications for the inserts. The City shall be responsible for the content and printing costs of the insert, and for the cost of shipping the printed inserts to Franchisee's billing agent. The City shall only pay incremental mailing costs if the City's insert results in an increase to the standard mailing costs normally incurred by Franchisee in sending its subscriber billing statements. In addition, Franchisee shall use reasonable efforts to accommodate PEG promotional spots received from the City on a reasonable basis in Franchisee's cross-channel ad avails, up to a maximum of 100 30-60 spots per year. Any such ad avails provided for PEG promotional spots shall be at no cost to the City or its designated access providers.

7.4.2 If Franchisee makes changes to its cable system that necessitate modifications to PEG facilities and equipment (including without limitation the upstream paths), Franchisee shall provide any additional facilities or equipment necessary to implement such modifications within thirty days of the date that the system changes are made, so that PEG facilities and equipment may be used and operated as intended, including, among other things, so that live and taped communications can be produced and cablecast efficiently to subscribers. By way of example, and

not limitation, should Franchisee cease delivery of all signals in an analog format to subscribers, it will provide the facilities and equipment necessary so that PEG signals can be delivered in a digital format

7.4.3 Any downstream and upstream PEG Channels provided pursuant to this Section may be further subdivided, compressed or decompressed at the sole discretion and sole expense of a designated access provider. As a condition of Franchisee's allowing such use, the designated access provider must fully cooperate with Franchisee in order not to cause any perceptible adverse effect on the performance of Franchisee's cable system, and shall take no action causing Franchisee to be unable to satisfy the performance requirements specified by this Franchise Agreement.

7.4.4 Except as otherwise provided in this Franchise Agreement, the channels provided for PEG use (except as expressly provided with respect to the I-net) shall be at Franchisee's cost

7.5 *Costs Not Franchise Fees* The parties agree that any cost to Franchisee associated with providing any support for PEG use required under this Franchise Agreement (including the provision of the I-Net) and payments made outside this Franchise Agreement for PEG and I-Net support, if any, are not a franchise fee within the meaning of 47 U.S.C. §542 and fall within one or more of the exceptions listed in 47 U.S.C. § 542(g)(2)

8. Institutional Network

8.1 *Institutional Network* Franchisee agrees that it will construct an institutional network ("I-net") in accordance with the Cable Act, as requested by the City, at its actual incremental construction costs. Additionally, the parties may reach an agreement as to Franchisee's maintenance of the City's I-net. The parties agree that the City may use PEG capital funds provided pursuant to Section 7.3.1 to pay Franchisee for I-net capital costs directly related to an I-net built by Franchisee. PEG capital funds collected and paid to the City pursuant to Section 7.3.1 may be used to construct the I-net only if Franchisee constructs the I-net.

9. Operation and Reporting Provisions

9.1 *Open Books and Records.* Without limiting its obligations under Section 2, Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with the cable ordinance as it existed as of the effective date of this Franchise Agreement. Franchisee shall be responsible for collecting the information and producing it.

9.2 *Time for Production.* Books and records shall be produced to the City at the Boulder Municipal Building, or such other location as the parties may agree. If Franchisee objects to a request for books and records, it must nonetheless produce the books and records requested, unless the City agrees that they need not be produced, or a court of competent jurisdiction rules otherwise. Notwithstanding any provision of the cable ordinance, if documents are too voluminous or for security reasons cannot be produced at the Boulder Municipal Building or mutually agreeable location within the City, then Franchisee may produce the material at another central location, provided it also agrees to pay the additional reasonable travel costs incurred by the City to access the materials. The parties agree that any amounts paid are not a franchise fee within the meaning of 47 U.S.C. § 542 and fall within one of the exceptions thereto.

9.3 *Reports Required.* Franchisee shall file the reports that it is required to provide under the cable ordinance as of the effective date of this Franchise Agreement.

9.4 *Records Maintained.* Franchisee shall maintain the records required by the cable ordinance as of the effective date of this Franchise Agreement. Franchisee shall maintain records, required by the cable ordinance; required to prepare all reports required under the cable ordinance; and sufficient to demonstrate whether or not Franchisee has complied with its obligations under this Franchise Agreement or applicable law. Records shall be kept for at least three years.

9.5 *Relation to Privacy Rights.* Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under this Franchise Agreement, including without limitation by providing appropriate subscriber privacy notices. Nothing in this Section 9.5 shall be read to require Franchisee to violate 47 U.S.C. § 551. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City.

10. Customer Service Standards

10.1 *Standards.* Franchisee shall meet or exceed the customer service standards of the cable ordinance and applicable law. In the event of a conflict among standards, the stricter standard shall apply.

10.2 *Ascertainment of Programming and Customer Satisfaction.* Upon the request of the City, but no more often than every two years, Franchisee shall, at the sole expense of Franchisee, undertake a survey of community views of cable operations in the City including without limitation programming, response to community needs, satisfaction and dissatisfaction with cable services offered by Franchisee, and customer service. Franchisee shall consult and cooperate with the City in developing and implementing an ascertainment methodology. The final form and content of the survey shall be as mutually agreed upon by Franchisee and the City. Franchisee shall provide the results of such survey to the City within two months after completing the survey. Upon request,

Franchisee shall also provide a copy of results from any other survey of subscribers in the City conducted independently by Franchisee within the previous year. Any survey results conducted within the City which are intended for external publication shall also be provided to the City. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense. Nothing in this Section shall be construed as requiring the renegotiation of this Franchise Agreement. Any such survey conducted may include subscribers from other communities in addition to the City, provided that the City's results are displayed separately.

11. Rate Regulation

The City may regulate Franchisee's rates and charges as provided by applicable law. All rates that are subject to regulation by the City must be reasonable and, except as applicable law provides otherwise, can only be changed with the prior approval of the City

12. Insurance; Surety; Indemnification

12.1 *Insurance Required.* Franchisee agrees to maintain adequate insurance throughout the entire length of the franchise period as required by the cable ordinance as of the effective date of this Franchise Agreement

12.2 *Indemnification.*

12.2.1 Franchisee shall, at its sole cost and expense, except for the City's liability as described in Section 6.3, indemnify, hold harmless, and faithfully defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system by Franchisee, its employees, affiliates or agents, copyright infringements or a failure by Franchisee to secure consents from the owners, authorized distributors, or Franchisees of programs to be delivered by the cable system, the conduct of Franchisee's business in the City; or in any way arising out of Franchisee's enjoyment or exercise of the franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by applicable law or this Franchise Agreement, except in cases where liability is: (a) solely caused by the gross negligence of the person or persons covered by the indemnity, or (b) results from programming contributed or produced by the City and transmitted over the cable system.

12.2.2 Without limiting the foregoing, Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the City, and its officers, agents, and employees from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the construction, operation, maintenance or repair of its system by Franchisee, its employees, affiliates

or agents, including without limitation any claim against Franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to intervention by the City in regulatory proceedings brought by Franchisee or to the programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless Franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of pre-screening programming for the purported purpose of banning or regulating indecent or obscene programming, and except for programming contributed or produced by Franchisee

12.2.3 The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees consented to by Franchisee and payment for any labor and expenses of the city attorney's office at the going rate for legal services in Boulder County. Such consent shall not be unreasonably withheld

12.3 *No Limit of Liability.* The provisions of this Section 12 shall not be construed to limit the liability of Franchisee for damages

13. Performance Guarantees and Remedies

13.1 *Letter of Credit.*

13.1.1 In satisfaction of the security fund requirements of the cable ordinance, Paragraph 11-6-13(a)(1), B.R.C. 1981, as the same existed on the effective date of this Franchise Agreement, Franchisee shall provide a letter of credit in the amount of \$100,000 prior to the effective date of this Franchise, and shall maintain that letter of credit throughout the franchise term

The letter of credit shall be in a form satisfactory to the City Attorney, (including without limitation specification of venue in Boulder), and with a financial institution satisfactory to the City. The City may require Franchisee to increase the amount of the letter of credit once every three years to reflect increases in the U.S. City Average of the Consumer Price Index. The letter of credit set forth in the Greater Metro Telecommunications Consortium franchise may be used to satisfy this requirement, as long as the Consortium agrees to procedures acceptable to the City for draws on such letter of credit

The City may draw upon the letter of credit for the reasons and after providing the notice specified in the cable ordinance as it existed as of the effective date of this Franchise Agreement. Franchisee's recourse, in the event Franchisee believes any taking of security funds is improper, will be through legal action after the security has been drawn upon, pursuant to the provisions of Section 13.1.3

13.1.2 Franchisee shall provide proof that the letter of credit complies with this Franchise Agreement and with all requirements of the cable ordinance

13.1.3 Franchisee agrees that it shall not attempt, through litigation or otherwise, to prevent or inhibit the City from drawing on the letter of credit. Franchisee shall have the right to appeal to the Boulder City Council for reimbursement in the event that it believes that the letter of credit was drawn upon improperly. Franchisee shall also have the right of a *de novo* court appeal if it believes the letter of credit has not been properly drawn in accordance with this Franchise Agreement. Any funds that the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Franchisee with interest from the date of withdrawal at a rate equal to the prime rate of interest as quoted by the Bank of New York within thirty business days of a final determination that the withdrawal was in error or wrongful.

13.2 *Material Term.* The letter of credit is a material term of this Franchise Agreement.

13.3 *Remedies.* In addition to any other remedies available at law or equity, the City may apply any one of the following remedies in the event Franchisee violates this Franchise Agreement or applicable law.

13.3.1 Revoke the franchise pursuant to the procedures specified in Section 13.5. Provided that, any amendments to the cable ordinance or the quasi-judicial procedures of the City, codified at Chapter 1-3, B.R.C. 1981, must provide the same level of due process as is provided under the procedures provided for under the cable ordinance and quasi-judicial procedures as the same existed on the effective date of this Franchise Agreement.

13.3.2 In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

13.3.3 Obtain liquidated damages as provided herein.

13.4 *Liquidated Damages.* Because Franchisee's failure to comply with provisions of this Franchise Agreement will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and Franchisee agree to the following liquidated damages for the following violations, which represent both parties' best estimate of the damages to the City resulting from the specified injury. To maintain that estimate, the parties agree that the liquidated damage amounts are in 2003 dollars as of the effective date of this Franchise Agreement (inflated by the US City Average of the Consumer Price Index), and shall be increased each year by the full amount of the increase in the U.S. City Average of the Consumer Price Index, once inflation from the effective date of this Franchise Agreement has exceeded twenty percent. Thus, treating 2003 as the base year, indexed as 100, the liquidated damages shall be increased in the first year when the index reaches 120, and once every year after that year as each annual increase becomes available.

13.4.1 For transferring the franchise without approval \$1,000/day for each violation for each day the violation continues.

13.4.2 For failure to comply with requirements for public, educational, and governmental use of the System: \$250/day for each violation for each day the violation continues

13.4.3 For violation of customer service standards: \$150 per violation, except for violations of applicable customer service standards for which Franchisee's compliance is not measured in terms of its response to individual customers, \$250 a month for any period during which it fails to meet applicable performance standards

13.4.4 For all other material violations of this Franchise Agreement for which actual damages may not be ascertainable: \$100/day for each violation for each day the violation continues

13.4.5 The City may impose liquidated damages as provided in this Section 13.4.5. Within fifteen days of the date of a notice of violation is sent to Franchisee, Franchisee may request, in writing, a public hearing before the City Council, pursuant to the procedures specified in the cable ordinance. The City may impose liquidated damages, accruing from the date of notice of the violation after the hearing unless it finds that (a) there was no violation; or (b) damages should not be imposed. Any amendments to the quasi-judicial procedures of the City, codified at Chapter 1-3, B.R.C. 1981, must provide the same level of due process as is provided under the procedures provided for under the quasi-judicial procedures as the same existed on the effective date of the Franchise Agreement. Nothing herein prevents Franchisee from raising a defense to the imposition of liquidated damages from the date of violation based upon laches, waiver, statute of limitations, or any other similar defense. Franchisee may appeal any imposition of liquidated damages to a court of competent jurisdiction.

13.5 *Procedures Prior to Revoking the Franchise.*

13.5.1 The City shall have the right to revoke the franchise for the reasons specified in the cable ordinance as of the effective date of this Franchise Agreement, and in Section 13.5 of this Franchise Agreement, pursuant to the revocation procedures specified in the cable ordinance. Provided that, any amendments to the cable ordinance must provide the same level of due process as is provided under the procedures provided for under the cable ordinance as the same existed on the effective date of this Franchise Agreement. Prior to initiating a revocation action, the City shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take action, and a sixty day period within which Franchisee may: (a) demonstrate that a violation does not exist or cure an alleged violation, or (b) if the nature of the violation prevents correction of the violation within sixty days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the City of such plan of action, or (c) show that the defect in performance should be excused. However, in any case involving repeated violations, the time period allowed for cure

may be reasonably reduced at the election of the City, and revocation proceedings shall follow the process set forth at Section 11-6-12(d), B.R.C. 1981, as amended.

13.5.2 If Franchisee fails to disprove or correct the violation within sixty days to the City's satisfaction or, in the case of a violation which cannot be corrected in sixty days, if Franchisee has failed to initiate a reasonable plan of corrective action and to correct the violation within a time satisfactory to the City, then the City may declare Franchisee in default, which declaration must be in writing. In the event that the City declares Franchisee in default, the City shall have the right to exercise any other rights and remedies afforded to the City in law or equity.

13.5.3 At any time after fifteen days of sending the written declaration of default to Franchisee, the City may revoke the franchise. However, within fifteen days of the date the declaration is sent to Franchisee, Franchisee may request, in writing, a public hearing before the City Council pursuant to the procedures specified in the cable ordinance. If Franchisee requests the hearing, Franchisee may not be revoked until after the hearing is conducted. The City may revoke after hearing unless it finds that (a) there was no default; or (b) the default has been fully cured, or there is a timetable for cure satisfactory to the City. Provided that, any amendments to the cable ordinance or the quasi-judicial procedures of the City, codified at Chapter 1-3, B.R.C. 1981, must provide the same level of due process as is provided under the procedures provided for under the cable ordinance and quasi-judicial procedures as the same existed on the effective date of this Franchise Agreement. Franchisee shall have the right to appeal the revocation to a court of competent jurisdiction.

13.6 *Revocation or Termination of Franchise* In addition to all other rights of the City under this Franchise Agreement, the City shall have the right to revoke the franchise. For the reasons specified in the cable ordinance as of the effective date of this Franchise Agreement; for a felony conviction for defrauding or attempting to defraud the City or subscribers; if Franchisee abandons the cable system, or, for any 24 hour period, willfully refuses to provide service to the City or any substantial portion of the City in accordance with this Franchise Agreement; and as otherwise provided herein.

13.7 *Remedies Cumulative.* All remedies under the cable ordinance and this Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve Franchisee of its obligations to comply with this Franchise Agreement. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity at any time. Except that, the City is not entitled to recover damages for the same injury under two separate Sections where doing so would result in a double recovery.

13 8 *Relation to Insurance and Indemnity Requirements.* Recovery by the City of any amounts under insurance, the construction/performance bond, the letter of credit, or otherwise does not limit Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve Franchisee of its obligations under this Franchise Agreement, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have

14. No Evasion

Franchisee shall not take any action to evade any provision of this Franchise Agreement or the cable ordinance. This provision shall be read to prohibit, among other things, Franchisee requiring any subscriber to waive any right (including without limitation privacy rights) as a condition of obtaining service, but this provision shall not be deemed to prohibit reasonable mandatory arbitration clauses as a condition of subscription.

15. Rights of Individuals Protected

No cable, line, wire, amplifier, converter, or other piece of equipment owned or controlled by Franchisee shall be installed by Franchisee inside a dwelling or other occupied structure without first securing the written permission of the owner of the property involved, except in those cases where Franchisee is permitted by federal or state law to install such facilities and equipment inside the structure without permission.

16. Miscellaneous Provisions

16.1 *Compliance With Laws.* Franchisee and the City shall comply with all applicable laws and regulations as they become effective, unless otherwise stated herein.

16.2 *Governing Law.* This Franchise Agreement shall be governed in all respects by the laws of the State of Colorado.

16.3 *Force Majeure.* Franchisee shall not be deemed in default with provisions of this Franchise Agreement where performance was rendered impossible by war, acts of terrorism, or riots, civil disturbances, unforeseeable shortage of materials or qualified labor, withholding of necessary permits and authorizations, strikes, floods, or other natural catastrophes beyond Franchisee's control, and the franchise shall not be revoked or Franchisee penalized for such non-compliance, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise Agreement without unduly endangering the health, safety, and integrity of Franchisee's employees or property, or the health, safety, and integrity of the public, public rights of way, public property, or private property.

16.4 *Notices* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be faxed or mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party

16.4.1 Notices to Franchisee shall be mailed to:

Comcast of Colorado IV, LLC
ATTN Local Government Affairs
8000 E. Iliff Ave.
Denver, Colorado 80231

With a copy to.

Comcast of Colorado IV, LLC
Attn. Legal Department
1500 Market Street
Philadelphia, PA 19102

16.4.2 Notices to City shall be mailed to.

City Manager
Post Office Box 791
Boulder, Colorado 80306

16.5 *Calculation of Time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

16.6 *Time of Essence, Maintenance of Records of Essence.* In determining whether Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence to this Franchise Agreement. The maintenance of records and provision of reports in accordance with this Franchise Agreement is also of the essence to this Franchise Agreement

16.7 *Captions.* The captions and headings of this Franchise Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Franchise Agreement

16.8 *Entire Franchise Agreement.* This Franchise Agreement represents the entire Franchise Agreement between the parties.

16.9 *Counterparts.* This Franchise Agreement may be executed in counterparts

16.10 *Effective Date.* The effective date of this Agreement shall be January 1, 2004.

AGREED TO THIS 11 DAY OF February, 2004.

City of Boulder

By: [Signature]
City Manager

ATTEST:

[Signature]
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

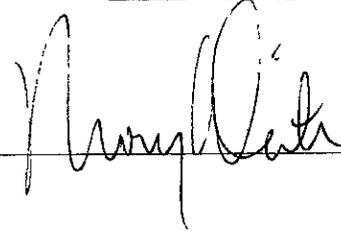
[Signature]
City Attorney

COMCAST OF COLORADO IV, LLC

By: [Signature]
Mary White, Senior Vice President

ACCEPTANCE

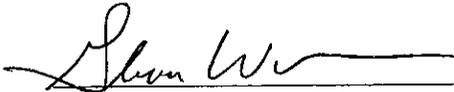
Comcast of Colorado IV, LLC hereby accepts unconditionally and agrees to be bound by all the terms and conditions of this Franchise Agreement, dated this 4th day of February, 2004, as granted by the Boulder City Council.

By: 

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me, a Notary Public, this 4th day of February, 2004, by Mary White, SVP

Witness my hand and official seal


Notary Public

My commission expires: 11/31/2007

(seal)

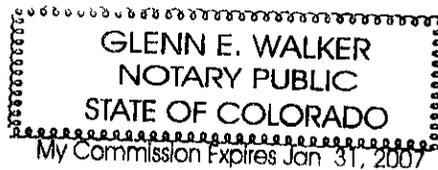


EXHIBIT A**LIST OF LOCATIONS RECEIVING FREE CABLE SERVICE**

Offices located at	
Municipal Building	1777 Broadway
Park Central Building	1739 Broadway
New Britain Building	1101 Arapahoe
Atrium Building	1300 Canyon
Main Library Building	1000 Canyon Blvd
Boulder Municipal Courts	6th & Canyon
Public Works Administrative Center	5050 East Pearl
Public Safety Building	1805 33 rd
Spruce Pool and Youth Services Building	2160 Spruce
Parks & Recreation Administrative Offices	3198 Broadway
Parks Maintenance	5200 East Pearl
East Boulder Community Center	660 Sioux
West Senior Center	909 Arapahoe
Carnegie Branch Library	1125 Pine Street
Meadows Branch Library	4800 Baseline
Reynolds Branch Library	3595 Table Mesa Drive
Municipal Channel 8	1000 Canyon Blvd
Daily Center for the Arts	2590 Walnut St
Fire Station #1	2441 13th St
Fire Station #2	2225 Baseline Rd
Fire Station #3	1585 30th St
Fire Station #4	4100 Dailey
Fire Station #5	4365 19th
Fire Station #6	5145 N 63rd
Fire Station #7	1380 55th
North Boulder Recreation Center	3170 Broadway
South Boulder Recreation Center	1360 Gillespie

EXHIBIT B

RETURN LINES

- 1) 1000 Canyon Blvd to Comcast Boulder headend (33rd & Walnut)
technology fiber, modulator provided and maintained by Comcast
use sole use is upstream transmission of PEG signal
- 2) 1777 Broadway to 1000 Canyon Blvd
technology coax, mod/demod provided and maintained by Comcast
use relay of programming originating in City Council Chambers
- 3) 1805 33rd to Comcast Boulder headend (33rd & Walnut)
technology coax, modulator provided and maintained by Comcast
use x5 year on test basis, designed as back up to main PEG facility
at 1000 Canyon in event of emergency that shuts down main studio
- 4) 2590 Walnut to Comcast Boulder headend (33rd & Walnut)
technology fiber, modulator provided and maintained by Comcast
use upstream carriage of PEG signal
- 5) CU stadium to Comcast Boulder headend (33rd & Walnut)
technology coax, modulator provided and maintained by Comcast
use upstream carriage of educational access programming
- 6) 6500 E Arapahoe to Comcast Boulder headend
technology coax, modulator provided and maintained by Comcast
use upstream carriage of school district board meetings to Comcast Boulder headend for insertion on
Government channel

ORDINANCE NO. 8032

AN ORDINANCE APPROVING THE RENEWAL OF A CABLE TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF COLORADO IV, LLC. FOR THE PERIOD MAY 1, 2015 THROUGH AND INCLUDING APRIL 30, 2025.

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THAT:

A. A cable franchise agreement was previously granted to TCI and its successor AT&T Broadband, and Comcast of Colorado IV, LLC. Comcast of Colorado IV, LLC, is the current grantee of the non-exclusive franchise. The current franchise is scheduled to expire on April 30, 2015.

B. A negotiated agreement for a franchise renewal with Comcast of Colorado IV, LLC, has been achieved. That agreement is appended and incorporated into this ordinance as Exhibit A. The City Council finds that adoption of the proposed franchise agreement is in the best interests of the city and is in compliance with city policies and ordinances that regulate the granting of franchises.

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

Section 1. The City Council grants Comcast of Colorado IV, LLC, a non-exclusive franchise to make reasonable and lawful use of the Public Rights-of-Way within the City for the purpose of providing cable service to residents and business in the city.

Section 2. The City Council approves the Cable Franchise Agreement between the City of Boulder and Comcast of Colorado IV, LLC, in substantially the form of Exhibit A, and authorizes the City Manager to execute the Cable Franchise Agreement and all agreements attendant thereto.

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

Section 4. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE
ONLY this 3rd day of March 2015.

Mayor

City Clerk

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

Mayor

City Clerk

CABLE FRANCHISE AGREEMENT

**COMCAST OF COLORADO IV, LLC
AND
THE CITY OF BOULDER, COLORADO**

May 1, 2015

**COMCAST OF COLORADO IV, LLC AND
THE CITY OF BOULDER, COLORADO**

CABLE FRANCHISE AGREEMENT

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**COMCAST OF COLORADO IV, LLC AND
CITY OF BOULDER, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, including specifically the Cable Act, the Boulder

Cable Code and the City's Design and Construction Standards, that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber within the City and owed by that Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise Agreement, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 "Boulder Cable Code" means Title 11, Chapter 6 of the Boulder Revised Code 1981 (B.R.C. 1981), as the same may be amended from time to time.

1.9 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.10 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.11 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.12 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.13 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.14 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system

that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.15 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.16 “City” is the city of Boulder, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.17 “City Council” means the Boulder City Council, or its successor, the governing body of the City.

1.18 “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.19 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.20 “Demarcation Point” means up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to the Grantee.

1.21 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.22 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.23 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to interconnection points on the Cable System.

1.24 “Dwelling Unit” means one room or rooms with internal connections for residential occupancy and including bathroom and kitchen facilities. Multiple Dwelling Units exist if there is more than one meter for any utility, address to the property or kitchen; or if there are separate entrances to rooms which could be used as separate Dwelling Units; or if there is a lockable, physical separation between rooms in the Dwelling Unit such that a room or rooms on each side of the separation could be used as a Dwelling Unit or rooms with no internal connections.

1.25 “Effective Date” means May 1, 2015.

1.26 “FCC” means the Federal Communications Commission.

1.27 “Fiber Optic” means a transmission medium of optical fiber cable, along with all

associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.28 “Franchise” shall mean a nonexclusive authorization granted in accordance with the Boulder Cable Code to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, maintenance and repair of a cable system along the public rights of way within all or a specified area of the City. Any such authorization, in whatever form granted, shall not mean or include: a) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; b) any permit or authorization required in connection with operations on public streets, rights of way or other property, including, without limitation, permits for attaching devices to poles or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along public rights of way; c) agreements required for the use of conduits and poles, whether publicly or privately owned; or d) express or implicit authorization to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to section 621(a)(2) of the Cable Act, 47 USC § 541(a)(2)).

1.29 “Franchise Agreement” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.30 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise Agreement.

1.31 “Franchise Fee” means that fee payable to the City described in Subsection 3.1.

1.32 “Grantee” means Comcast of Colorado IV, LLC or its successor, transferee or assignee.

1.33 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use, allocated on a *pro rata* basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- revenues derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the City and shall be allocated on a *pro rata* basis using total Cable Service Subscribers reached by the advertising;
- all commissions, rep fees, Affiliate fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Gross Revenues" shall not include:

- actual Bad Debt write-offs, except any portion that is subsequently collected;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Government (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(B) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card

value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(C) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.32 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to 1.29(D) below.

(D) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.34 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.35 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.36 "Manager" means the City Manager of the City or designee.

1.37 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.38 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.39 "Public Right(s)-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System. No reference herein to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit

its use for such purposes, and Grantee shall be deemed to gain only those rights to use as are properly in the City and as the City may have the undisputed right and power to give.

1.40 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.41 “Standard Drop” means an aerial connection extending no more than 125 feet from the potential Subscriber’s demarcation point to the point nearest the property line on the public right-of-way, or if closer, to the nearest point on the Cable System from which Cable Service can be provided to that Subscriber.

1.42 “State” means the State of Colorado.

1.43 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

1.44 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Subscribers.

1.45 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.46 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.47 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.48 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.49 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise Agreement, are formally incorporated and made a part of this Franchise Agreement by this reference:

- 1) *Exhibit A*, entitled Customer Service Standards.

- 2) *Exhibit B*, entitled Report Form.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Public Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise Agreement and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise Agreement shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise Agreement. This Franchise Agreement and all rights and privileges granted under the Franchise are subject to the City's police and other powers. However, once the Franchise grant is effective, this Franchise Agreement is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither City nor Grantee may take any unilateral action which materially changes the explicit mutual promises in this contract. Subject to the foregoing, Grantee does not waive its right to challenge the lawfulness of any particular amendment to the Boulder Cable Code or any other provision of the City code on the ground that a particular action is in excess of the City's power under Colorado or federal law or violates the Colorado or the United States Constitution.

(B) Nothing in this Franchise Agreement shall be deemed to waive the lawful requirements of any generally applicable City ordinance. The issuance of the Franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the City's Public Rights-of-Way covered by the Franchise, including without limitation the right to perform work on its roadways, Public Rights-of-Way and drainage facilities, by constructing, altering, renewing, paving, widening, grading, blasting or excavating; and the right to build and install systems and facilities, with or without a franchise. Grantee is free to challenge any unilaterally imposed requirement of the City as unlawful and/or in excess of the City's police power, but not on the grounds that it imposes police power requirements over and above this Franchise Agreement.

(C) Each and every term, provision or condition herein is subject to the provisions of Applicable Law. In the event of a conflict between the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement and this Franchise Agreement, the Franchise Agreement shall control, except where expressly provided otherwise in this Franchise Agreement. However, although the exercise of rights hereunder is subject to the Boulder Cable Code, the Boulder Cable Code is not a contract. Nothing in this Section 2.1 shall prevent Grantee from challenging a particular amendment to the Boulder Cable Code as an impairment of this Franchise Agreement.

(D) This Franchise Agreement shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise Agreement, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise Agreement.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise Agreement shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Public Right-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise Agreement including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise Agreement is intended to convey limited rights and interests only as to those Public Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Public Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Public Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise Agreement does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise Agreement is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise Agreement does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Public Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and

appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise Agreement, is granted extensive and valuable rights to operate its Cable System for profit using the City's Public Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise Agreement to be paid for these valuable rights throughout the term of the Franchise Agreement.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise Agreement

This Franchise Agreement and the rights, privileges and authority granted hereunder shall take effect on January 1, 2015 (the "Effective Date"), and shall terminate at midnight on December 31, 2024 unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

The Franchise granted herein shall be nonexclusive, and subject to all prior franchises, rights, interests, easements or licenses granted by the City to any Person to use any Public Right-of-Way for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

2.5 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise Agreement, then the City agrees that the obligations in this Franchise Agreement will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but

are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process for this Franchise Agreement, as provided for in Section 2.5 (A), shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise Agreement; (2) identifying the Franchise Agreement terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise Agreement amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.5 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise Agreement modifications, and that such negotiation will proceed and conclude within a ninety-day (90) time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the City and Grantee reach agreement on the Franchise Agreement modifications pursuant to such negotiations, then the City shall amend this Franchise Agreement to include the modifications.

(D) In the alternative to Franchise Agreement modification negotiations as provided for in Section 2.5 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise Agreement by substituting the franchise agreement or other similar lawful authorization that the City grants to another provider of Cable Services (with the exception of any system design requirements unique to the competitive provider) so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise Agreement with the franchise agreement entered into by the City with the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.5(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise Agreement unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Subject to Section 15, Severability, in the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule,

or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

2.6 Familiarity with Franchise Agreement

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Agreement and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise Agreement, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act. The City and Grantee agree that this Franchise Agreement is a negotiated agreement and that for the purpose of interpretation neither City nor Grantee shall be deemed the drafter of this Franchise Agreement.

2.7 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise Agreement; (2) accepts and agrees to comply with each and every provision of this Franchise Agreement subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise Agreement and in consideration of permission to use the City's Public Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the

performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

A written report, verified by an authorized representative of Grantee and containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, shall accompany each payment to the City or be sent concurrently under separate cover. Such report shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year this Franchise is in effect, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

Upon thirty (30) days' prior written notice, but no more frequently than annually, the City, including the City's Auditor or his/her authorized auditors, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise Agreement. Pursuant to subsection 1.32, as part of the Franchise Fee audit/review, the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits, whichever is less), Grantee shall pay the total reasonable cost of the audit/review, such cost not to exceed seven thousand dollars (\$7,000) for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated

from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Public Rights-of-Way for Grantee's use of the City's Public Rights-of-Way, such payments shall be the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise Agreement), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise Agreement, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise Agreement may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise Agreement, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business

license fees or other payments. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise Agreement terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise Agreement in the public interest.

(B) Nothing in this Franchise Agreement shall limit nor expand the City's right of eminent domain under State law; provided, however, that in any condemnation action no award shall be made for the value of the Franchise or the use of Public Rights-of-Way.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual

orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise Agreement, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross-Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross-subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

4.7 Time Limits Strictly Construed

Whenever this Franchise Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise Agreement and sufficient grounds for the City to invoke any relevant remedy.

4.8 Amendment Procedure

Any amendment to this Franchise Agreement shall be made pursuant to the provisions of the Boulder Cable Code as it existed on the Effective Date of this Franchise Agreement. Within thirty (30) days of receipt of written notice that a Party wishes to amend this Franchise Agreement, the City and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise Agreement. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) Biennial performance evaluations shall be conducted pursuant to the terms of the Boulder Cable Code provided that the City give Grantee thirty (30) days written notice prior to holding any performance evaluation. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise Agreement, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced one (1) week in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics that may be discussed at any evaluation session may include, but are not limited to, Cable System construction and performance, Grantee's compliance with the Boulder Cable Code and this Franchise Agreement, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise Agreement; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise Agreement.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise Agreement, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) Grantee shall, at its sole cost and expense, indemnify, hold harmless, and faithfully defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system by Grantee, its employees, Affiliates or agents; copyright infringements or a failure by Grantee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the Cable System; the conduct of Grantee's business in the City; or in any way arising out of Grantee's enjoyment or exercise of the Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by Applicable Law or this Franchise Agreement, except in cases where liability is: (a) solely caused by the gross negligence of the person or persons covered by the indemnity; or (b) results from programming contributed or produced by the City and transmitted over the Cable System.

(B) Without limiting the foregoing, Grantee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the City, and its officers, agents, and employees from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the construction, operation, maintenance or repair of its system by Grantee, its employees, affiliates or agents, including without limitation any claim against Grantee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to intervention by the City in regulatory proceedings brought by Grantee or to the programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. § 532, unless Grantee was in any respect engaged in determining the editorial content of the program, or adopts a policy of pre-screening programming for the purported purpose of banning or regulating indecent or obscene programming, and except for programming contributed or produced by Grantee.

(C) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees consented to by Grantee and payment for any reasonable labor and expenses of the city attorney's office at the going rate for legal services in Boulder County. Such consent shall not be unreasonably withheld.

(D) Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Public Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(E) Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise Agreement to the extent such actions are consistent with this Franchise Agreement and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise Agreement.

(F) The fact that Grantee carries out any activities under this Franchise Agreement through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(G) The provisions of this Section 5.1 shall not be construed to limit the liability of Grantee for damages.

5.2 Insurance

Grantee shall maintain adequate insurance throughout the Term as required by the Boulder Cable Code as of the Effective Date.

5.3 Letter of Credit

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of One Hundred Thousand dollars (\$100,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the City as set forth in Subsections 5.4 (A) and (B) above, if the City is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in 5.4 (A), Grantee shall not be required to provide a separate Letter of Credit to the City.

(D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or

breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(E) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with the City's Customer Service Standards, attached hereto as Exhibit A and incorporated herein by this reference, as the same may be amended from time to time. Grantee reserves the right to challenge any future customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise Agreement.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise Agreement, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to City

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall identify the City on Subscriber bills as the Franchising Authority.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City's auditors, shall have access to, and the right to inspect any books or records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise Agreement or Applicable Law. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection of this Franchise Agreement or Applicable Law shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise Agreement, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City shall protect Grantee's confidential commercial data, identified as such by Grantee, from disclosure under the Colorado Open Records Act, § 24-72-204, C.R.S. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise Agreement, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee, provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time, and shall withhold release for the maximum period permitted by law to provide the Grantee the opportunity to seek court protection against the release of the requested documents. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30-days

written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Public Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City, except for information involving the privacy rights of individual Subscribers, is public information and shall be treated as such.

(C) "As-built" drawings for all construction completed by Grantee since the City's last request for such drawings.

(D) Grantee shall maintain for a period of at least six months those records listed in Section 11-6-6(d) of the Boulder Cable Code.

7.4 Annual Reports

No later than ninety (90) days after the end of its fiscal year, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise Agreement;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, any

services added or dropped, and any technological changes occurring in the Cable System;

- (D) A statement of planned construction, if any, for the then-current year;
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body; and
- (F) A list of officers and members of Grantee's board of directors and its parent;
- (G) An ownership report, indicating all persons who at the time of filing control or won an interest in the Franchise of ten percent or more;
- (H) A report on the Cable System's technical test and measurements; and
- (I) A summary of the number and type of outages (an outage being a loss of sound or video on any signal or a significant deterioration of any signal affecting Subscribers) known by Grantee, specifying all details of each outage known to Grantee and the cause thereof.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) On or before April 30, July 31, October 31 and January 31 of each year this Franchise Agreement is in effect and for one month thereafter, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;

(3) A summary of customer complaints referred by the City to Grantee; and,

(4) Such other information as reasonably requested by the City, including but not limited to a summary of escalated complaints, indentifying both the number and nature of the complaints received and an explanation of their disposition.

The provisions of this subsection (B) shall survive for one full quarter after the expiration, or termination for any reason, of this Franchise Agreement.

7.7 Failure to Report/Maintain Records

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise Agreement or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), or to keep any records required to be kept may, at the City's option, be deemed a breach of this Franchise Agreement.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise Agreement (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise Agreement and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise Agreement or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;

(I) National news, weather and information (including direct coverage of federal and/or state legislative proceedings); and,

(J) Public, Educational and Government Access, to the extent required by this Franchise Agreement.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date shall be deemed the mix and quality of Cable Services required under this Franchise Agreement throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if the Federal Communications Commission or a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires

the Cable System in accordance with this Franchise Agreement, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System; and in the event of a change of Grantee not caused by a breach of this Franchise Agreement by Grantee, Grantee shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself, for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise Agreement. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise Agreement, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with City in City's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) On the Effective Date, Grantee shall make available to City five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Public Access or Government Access Channel, or portion thereof, within sixty (60) days after a written request for such temporary use is submitted to City, if such Public Access or Government Access Channel is not fully utilized. A Public Access or Government Access Channel shall be considered "fully utilized" if substantially unduplicated programming is delivered over it more than an average of

38 hours per week over a calendar year. Programming that is repeated on a Public Access or Government Access Channel up to two times per day shall be considered “substantially unduplicated programming.” Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to the City. If a Public Access or Government Access Channel will be used by Grantee in accordance with the terms of this subsection, the institution to which the Public Access or Government Access Channel has been allocated shall have the right to require the return of the Public Access or Government Access Channel or portion thereof. The City shall request return of such Public Access or Government Access Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Public Access or Government Access Channel, or portion thereof, in accordance with this subsection. In such event, the Public Access or Government Access Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide four (4) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the Demarcation Point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry an SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the Demarcation Point. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the Demarcation Point.

(4) SD Access Channels may require SD Subscribers to buy or lease special equipment, available to all SD Subscribers. Grantee is not required to provide free SD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) If Grantee does not carry the Audio Information Network of Colorado as

part of its commercial service, and it is available for carriage, Grantee shall continue to provide an FM band PEG channel for carriage of the Audio Information Network of Colorado service on the Basic or Expanded Basic Service tier for at least twelve (12) months from the Effective Date of this Franchise Agreement. The termination of such service on the Cable System shall be publicized by Grantee at its sole cost through bill messages provided to Subscribers at 12 months, 6 months and 3 months prior to the time such service is terminated.

(D) High Definition (“HD”) Digital Access Channels.

(1) Upon written request and within one hundred twenty (120) days of the Effective Date, Grantee shall activate one (1) HD Access Channel, for which the City may provide Access Channel signals in HD format to the Demarcation Point at the designated point of origination for the Access Channel. After the third anniversary of the Effective Date, and with at least 120 day written notice to Grantee, the City may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of HD Access Channels shall only occur after the following conditions are satisfied:

(a) The City shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the Demarcation Point at the designated point of origination for the HD Access Channel. For purposes of this Franchise Agreement, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(5) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the City to procure and provide, at City's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise Agreement.

(E) Grantee shall simultaneously carry the one (1) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C). At such time as Grantee activates the second HD Access Channel, the number of SD Access Channels Grantee is obligated to provide in Section 9.2(C) shall be reduced from four (4) to three (3).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise Agreement are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the local governments served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to

Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide City and all Subscribers within City with a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Government Access Channel designations are changed.

9.5 Web-Based Video On Demand and Streaming

(A) Within one hundred twenty (120) days after written request of the City, Grantee shall additionally provide the City with a one-time grant of funding, in an amount not to exceed TWENTY-FIVE THOUSAND dollars (\$25,000), which the City shall use to acquire and/or replace equipment to facilitate cable and web-based Access programming.

(B) The City's Designated Access Provider(s) may provide web-based video on demand programming on line; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$0.50) per month per Subscriber (the "PEG Contribution") until a new rate is made effective as set forth below, to be used solely for capital costs related to Public, Educational and Government Access and the web-based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. Following City Council decision, made by motion, Grantee shall provide the City with up to seventy-five cents (\$0.75) per month per Subscriber. Prior to the implementation of any change in the amount of this support the City shall give Grantee one hundred and twenty (120) days' written notice of the City Council's decision and any change will only be implemented concurrent with Grantee's annual price increase. Additional increases may be required by ordinance (including a mandatory public hearing) no sooner than 42 months after the Effective Date, to an amount over seventy-five cents (\$0.75), but in no event will the amount exceed a total of One Dollar (\$1.00) per Subscriber per month and such amount must be applicable to all franchised cable operators in the City. Prior to the implementation of any change in the amount of this support the City must give Grantee one hundred and twenty (120) days' written notice of the City Council's decision and any change will only be implemented concurrent with Grantee's annual price increase. No fees shall be charged on gratis accounts. The City shall be solely responsible for all liability to any third party arising out of the City's use of PEG use capital funds that will be collected and paid to the City. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment

shall be due and payable no later than thirty (30) days following the end of the quarter. If this Franchise expires or terminates for any reason, Grantee is required to make the final PEG Contribution. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise Agreement shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network..

9.7 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise Agreement and Applicable Law.

9.8 Access Channels on Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.9 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.10 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the Demarcation Point at the same level of technical quality and reliability required by this Franchise Agreement and all other Applicable Law. Grantee shall provide routine maintenance for all transmission equipment on its side of the Demarcation Point, including

modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the Demarcation Point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission by City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by any negligent or intentional act or omission of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

9.11 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

9.12 Return Lines/Access Origination

(A) Grantee shall continuously maintain the previously constructed return lines throughout the Term of the Franchise Agreement, in order to enable the distribution of Access programming to Subscribers on the Access Channels; provided, however, that Grantee's maintenance obligations with respect to a particular location shall cease if it is no longer used by the City to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL PUBLIC RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Public Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Public Right-of-Way issues that may impact the Cable System.

10.2 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Public Right-of-Way cuts within the City.

10.3 General Standard

Grantee shall construct, operate and maintain the Cable System subject to the supervision of all of the authorities of the City who have jurisdiction in such matters and in strict compliance with all Applicable Law, including specifically the Boulder Cable Code and the City's Design and Construction Standards. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

10.4 Permits Required for Construction

Prior to doing any work in the Public Right-of Way or other public property, Grantee shall apply for, and obtain, all required permits from the City. As part of the permitting process, the City may impose such conditions and regulations including but not limited to those necessary for the purpose of protecting any structures in such Public Rights-of-Way, proper restoration of such Public Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Public Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the International Building Code and other building codes, the International Fire Code, and the International Mechanical Code, zoning codes and regulations, and the City's Design and Construction Standards.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and

regulations of the Federal Aviation Administration and all Applicable Law.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.7 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Public Rights-of-Way.

10.8 Minimal Interference

Work in the Public Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.9 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.10 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Law concerning hazardous substances relating to Grantee's Cable System in the Public Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the Public Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances arising out of or related to Grantee's Cable System.

10.11 Locates

Prior to doing any work in the Public Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Public Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unallocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.12 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

10.13 Underground Construction and Use of Poles

(A) When required by Applicable Law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Public Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such

relocation to all users of the Public Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) If installing cable lines aerially, Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Public Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the reasonable cost of the trenching and boring. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.14 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.15 Burial Standards on Private Property

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards when burying lines on private property. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Public Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

Grantee shall comply with the City's Design and Construction Standards when buying lines on public property.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.16 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.17 Repair and Restoration of Property

(A) Notice of Damage. The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Prompt Restoration. Whenever Grantee disturbs or damages any Public Right-of-Way, other public property or any private property, Grantee shall promptly restore the Public Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Public Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Public Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and

equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

10.18 Use of Conduits by the City

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Public Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the right-of-way for the provision of non-cable services. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

10.19 Common Users

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Public Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Public Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Public Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Public Rights-of-Way to comply with the provisions of this subsection.

10.20 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any City Public Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any such facility, Grantee shall, at the City's request, submit to the City a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise Agreement.

10.21 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Public Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Public Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes, or may remove the facilities at Grantee's expense and Grantee shall reimburse the City within thirty (30) days after receipt of a written invoice.

10.22 Movement of Cable System Facilities for City Purposes

If the City generally makes funds available to users of the Public Rights-of-Way for the relocation of those users' facilities in the Public Rights-of-Way for City purposes, Grantee shall be entitled to its pro rata share of such funds.

10.23 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.24 Reservation of City Use of Public Right-of-Way

Nothing in this Franchise Agreement shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading,

paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.25 Tree Trimming

Subject to obtaining advance permission from the Manager, which shall not be unreasonably refused, Grantee may prune or cause to be pruned, using pruning practices approved by the City Forester, any tree that overhangs the City's Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with the wires of the Cable System. At the option of the City, such trimming may be done by it for by Grantee, but in either case, at the expense of Grantee. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Public Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.26 Inspection of Construction and Facilities

The City may conduct inspections of the Cable System including, without limitation, the headend, construction areas and Subscriber installations to assess, among other things, Grantee's compliance with this Franchise Agreement and Applicable Law. Inspection does not relieve Grantee of its obligation to build the Cable System in compliance with all provisions of this Franchise Agreement and Applicable Law.

10.27 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise Agreement and all Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise Agreement and the Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process and all Applicable Law.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise Agreement or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary information upon the City's reasonable request as part of the technology assessment. If confidential or proprietary information is requested by the City, Grantee shall provide such information subject to the terms of a non-disclosure agreement acceptable to both parties.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise Agreement in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(B) The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment provided pursuant to this subsection.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise Agreement; and

(3) All other tests as otherwise specified in this Franchise Agreement.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber or Designated Access Provider complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise Agreement, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise Agreement. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which, in the judgment of the City, casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem which precipitated the special tests;

- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request.

(B) Residential Subscribers. Except where Grantee is unable to obtain required easements or permits and subject to Section 12.1(D), upon the request of a potential Subscriber, Grantee shall extend Cable Service at its then-prevailing installation charge for such service to any residence located within the City as of the Effective Date. There shall be no charge for extending plant to a point where Cable Service can be provided with a Standard Drop, or (if closer) to a point on the property line of the potential Subscriber from which service can be provided to the potential Subscriber. There shall be no charge for extending plant to areas with a residential density of twenty-five (25) residences per mile of Cable System plant. There shall be no charge for extension of plant for residences located within the City as of January 1, 2004. Where these standards are not satisfied, Grantee may condition service extensions at the then-prevailing charge upon the person or persons requesting service agreeing to pay a *pro rata* share of the cost of extending the plant to a point where service can be provided with a Standard Drop. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. For purposes of this subsection, in areas where Grantee has not constructed Cable System lines as of the Effective Date, each dwelling unit within a Multiple Dwelling Unit will count as a residential unit if and only if Grantee can obtain access to the Multiple Dwelling Unit on reasonable terms and conditions.

(C) Commercial Subscribers; Annexations After Effective Date. For non-residential locations in the City and for areas annexed to the City after the Effective Date, except where Grantee is unable to obtain required easements or permits and subject to Section 12.1(E), Grantee shall provide Cable Service upon request at its then-prevailing installation charge, but may charge for any required plant extension except where fifteen (15) commercial locations per mile of Cable System plant agree to subscribe to Grantee's cable service for one year at commercial rates in which case there shall be no charge for plant extension. Notwithstanding the foregoing, Grantee may charge any potential customer located in a mall or strip mall for any line

extension greater than 100' required to cross a parking lot to provide Cable Service.

(D) No Service Required. Grantee is not required to provide Cable Service to any:

(1) Occupant of a mall or strip mall where such occupant is unwilling to pay its portion of any applicable line extension costs;

(2) Commercial occupant of commercial structures above the first floor, where inside wiring necessary to provide the Cable Service is not already present, or where the owner or occupant is unwilling to install or pay for the inside wiring necessary to provide the Cable Service;

(3) Occupant of unlawful dwelling units; or,

(4) Potential customer in a building or building complex where Grantee is denied access.

(E) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the Public Right of Way at a Multiple Dwelling Unit.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and/or occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

12.3 Provision of Broad Categories of Services

This Section shall be interpreted consistent with the limitations set forth in 47 U.S.C. §544(b)(2)(B). In addition to such other service requirements as may be contained in this agreement, Grantee agrees to continue to provide the twelve locally-available FM radio stations,

or if lower, the number of locally available FM radio stations from which Grantee can obtain retransmission consent at no cost (the term costs refers to a payment made to an FM station for the right to carry the station's signal and does not include copyright payments that may be required) for at least twelve (12) months from the Effective Date of this Franchise Agreement. The termination of FM radio service on the Cable System shall be publicized by Grantee at its sole cost through bill messages provided to Subscribers at 12 months, 6 months, and 3 months prior to the time such service is terminated.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Notice of Violation; Right to Cure

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise Agreement, has violated this Agreement or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the City, that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the letter of credit as monetary damages;

(2) Commence the procedures for the revocation of the Franchise pursuant to

subsection 13.3; or,

(3) Pursue any other legal or equitable remedy available under this Franchise Agreement or any Applicable Law.

(D) The determination as to whether a material breach of this Franchise Agreement has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Material Breach

In addition to revocation of the Franchise in accordance with other provisions of this Franchise Agreement, the City may revoke the Franchise and rescind all rights and privileges associated with this Franchise Agreement in the following circumstances, each of which represents a material breach of this Franchise Agreement:

(A) If Grantee fails to perform any material obligation under this Franchise Agreement or under any other agreement, ordinance or document regarding the City and Grantee;

(B) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(C) If Grantee attempts to evade any material provision of this Franchise Agreement or to practice any fraud or deceit upon the City or Subscribers;

(D) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(E) If Grantee makes a material misrepresentation of fact in the application for the Franchise or the negotiation of this Franchise Agreement.

13.3 Procedure for Revocation of Franchise and Termination of Franchise Agreement

(A) Pursuant to the procedures herein, the Franchise granted by this Franchise Agreement may be revoked by the City Council and this Franchise Agreement may be terminated for Grantee's failure to construct, operate or maintain the Cable System as required by this Franchise Agreement, or for any other material breach of this Franchise Agreement.

(B) Upon completing the procedures set forth in subsection 13.1 and prior to forfeiture, revocation of the Franchise or termination of this Franchise Agreement, the City Council shall hold a public hearing, upon at least forty-five calendar days' prior written notice, at which time Grantee and the public shall be given an opportunity to be heard. At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared

equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(C) Following the public hearing, the City Council may determine whether to revoke the Franchise based on the evidence presented at the hearing, and other evidence of record. If the City Council determines to revoke a Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(1) Grantee shall be entitled to such relief as the court may deem appropriate.

(2) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise Agreement in lieu of revocation of the Franchise Agreement.

13.4 Remedies in the Case of Revocation or Abandonment

(A) If the City revokes the Franchise and terminates this Franchise Agreement pursuant to this Section 13, or if, for any other reason, Grantee abandons or fails to operate or maintain service to its Subscribers as required by the Franchise, the City may, subject to Applicable Law:

(1) Order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore; or

(2) By resolution of the City Council, acquire ownership or effect a transfer of the Cable System at fair market value, with no value assigned to the Franchise itself, with the price adjusted to account for other equitable factors that may be considered consistent with Applicable Law.

(B) If Grantee fails to complete any removal required by subsection 13.4 (A)(1) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(C) If the Grantee abandons its Cable System during the Franchise term, or fails to

operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise Agreement.

13.5 What Constitutes Abandonment

As used in Section 13.4, above, abandonment means:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement.

13.6 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

13.7 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise Agreement or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise Agreement are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

13.8 Alternative Remedies

No provision of this Franchise Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.9 Assessment of Monetary Damages

(A) The City may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise Agreement. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and-in this Franchise Agreement. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise Agreement or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise Agreement.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Applicable Law, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise Agreement term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then-current Franchise Agreement, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise Agreement and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and City are engaged in a renewal process, Grantee shall continue to provide Cable Service to its Subscribers on a month-to-month basis, on the same terms and conditions as provided in this Franchise Agreement and the Cable Code. During any such "hold over" period, Franchisee shall continue to pay the Franchise Fee as set forth above, in addition to honoring all other provisions of this Franchise Agreement.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by App and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) No Transfer application shall be granted unless the proposed transferee:

(1) Agrees in writing that it will abide by and accept the terms of the Boulder Cable Code, this Franchise Agreement and any additional terms and conditions that the City reasonably determines are needed to ensure compliance by the transferee with such Franchise Agreement;

(2) Agrees in writing to assume and be responsible for the obligations and liabilities of Grantee, known and unknown, under this Franchise Agreement and Applicable Law;

(3) Provides reasonable performance guarantees to the City that the City considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the proposed transferee;

(4) Agrees in writing that, except as provided in Section 626 of the Cable Act concerning use of previous non-compliance evidence in renewal proceedings following a transfer, approval by the City of the transfer shall not constitute a waiver or release of any rights of the City under this Franchise Agreement or Applicable Law whether arising before or after the effective date of the transfer; and

(5) Posts all required bonds, securities in a manner to ensure that there is no gap in coverage.

(F) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(G) Within thirty (30) days of any transfer or sale, if approved or deemed granted by

the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise Agreement, subject to Applicable Law, and will not be required to file an additional written acceptance.

(H) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(I) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise Agreement or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that (i) the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise; (ii) Grantee affirms that it shall be responsible for all of Grantee's obligations and liabilities, known and unknown, under the Franchise Agreement and Applicable Law for all purposes, including but not limited to renewal under Section 626; (iv) required bonds, securities and the like must be maintained so that there is no gap in coverage, if there will be any change I the same as a result of the transaction; (v) Grantee and the party being added to the chain of control must agree in writing that there shall be no waiver or release of any right of the City (whether such right arises before or after the transaction) under this Franchise Agreement or Applicable Law, as a result of the transaction; and (vi) the party being added to the chain of control must be a wholly-owned subsidiary of Comcast Cable Holdings, LLC, and Comcast Cable Holdings, LLC must agree to guarantee unconditionally the performance of the Grantee and the party being added to the chain of control. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise Agreement is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise Agreement, all of which will remain in full force and effect for the term of the Franchise Agreement.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise Agreement, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise Agreement, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise Agreement, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise Agreement:

Grantee's address shall be:

Comcast of Colorado, IV, LLC
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs

The City's address shall be:

City Manager
City of Boulder
1777 Broadway
Boulder, CO 80302

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise Agreement are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise Agreement, if such publication is required.

16.5 Binding Effect; No Third Party Beneficiaries

This Franchise Agreement shall be binding upon the parties hereto, their permitted successors and assigns. This Franchise Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any Person not a party to this Agreement.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties and neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

16.9 Time of Essence

In determining whether Grantee has substantially complied with this Franchise Agreement, the Parties agree that time is of the essence to this Franchise Agreement.

16.10 Entire Agreement

This Franchise Agreement and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.11 Applicable Law

This Agreement shall be construed in accordance with the laws of the State of Colorado and the Cable Act. Jurisdiction and venue for any judicial dispute between the City and Grantee arising under or out of this Franchise Agreement shall be in Boulder County District Court, Colorado, or in the United States District Court in Denver.

16.12 Counterparts

This Franchise Agreement may be executed in counterparts.

Customer Service Standards

I. POLICY

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within the established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under Normal Operating Conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supersede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City Boulder, Colorado.

II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

"Cable Operator" shall mean the Grantee, as described in the Franchise Agreement, and the Grantee's employees, agents, Contractors or Subcontractors.

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"City" shall mean the city of Boulder, Colorado.

"Colorado Communications and Utilities Alliance" or "CCUA" shall mean an association comprised primarily of local governmental subdivisions of the State of Colorado, or any successor entity. The CCUA may, on behalf of its members, be delegated the authority to review, investigate or otherwise take some related role in the administration and/or enforcement of any functions under these Standards.

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated Complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the City.

"Necessary" shall mean required or indispensable.

“Normal Business Hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include at least some evening hours one night per week, and include some weekend hours.

“Normal Operating Conditions” shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

“Other Service(s)” shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator Necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

“Service Interruption” or “Interruption” shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

“Service Outage” or “Outage” shall mean a loss or substantial impairment in reception on all channels.

“Subcontractor” shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

“Writing” or “written” as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

III. CUSTOMER SERVICE

A. Courtesy

Cable Operator employees, Contractors and Subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with Customers.

B. Accessibility

1. A Cable Operator shall provide Customer service centers/business offices (“Service Centers”) which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the City, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the Customer’s address if the equipment has not been damaged in any manner due to the fault or negligence of the Customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the Customer with various menu options to address the Customer’s concern, the recorded message must provide the Customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a Customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under Normal Operating Conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under Normal Operating Conditions, a Customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by Customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the Customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the Customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the Customer.

2. Residential Installation and Service Appointments

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of Customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the Customer's location.

b. A Cable Operator may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment, unless the Customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the Customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as Necessary at a time that is convenient to the Customer, within Normal Business Hours or as may be otherwise agreed to between the Customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the

Customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the Customer within forty-eight (48) hours.

3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd Customer call is received.

b. All other Service Interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the Cable System or its operation of the Cable System, in a manner consistent with the privacy rights of Customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. A Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning Customer complaints referred by the Franchising Authority to the Grantee, a summary of service calls, a log of all Service Interruptions, and any other requirements of a Franchise Agreement, including a summary of complaints, but no Personally Identifiable Information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in Writing by the Franchising Authority that such summaries are no longer required.

d. All Service Outages and Service Interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled Interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a Customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the Customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is Necessary to address any video or audio reception problem, the Customer may choose a block of time described in Section III.C.2.a. At the Customer's request, the Cable Operator shall repair the problem at a later time convenient to the Customer, during Normal Business Hours or at such other time as may be agreed to by the Customer and Cable Operator. A Cable Operator shall maintain periodic communications with a Customer during the time period in which problem ascertainment and repair are ongoing, so that the Customer is advised of the status of the Cable Operator's efforts to address the problem.

5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the Customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the Customer and the Cable Operator.

6. Billing, Credits, and Refunds

a. In addition to other options for payment of a Customer's service bill, a Cable Operator shall make available a telephone payment option where a Customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a Customer's service bill for that period. If a Customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the Customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with Applicable Law. If the Customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the Customer's service. If a Customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the Customer's service, provided it has provided two (2) weeks' notice to the Customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a Customer within 30 days after determining the Customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the Customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or Service Interruption to a large number of Customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. In the case of an emergency, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made., unless such notice is waived by the Customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum,

prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

1. For any Customer with a disability, a Cable Operator shall deliver and pick up equipment at Customers' homes at no charge unless the malfunction was caused by the actions of the Customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other Applicable Law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired Customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) Customers.

4. Any Customer with a disability may request the special services described above by providing a Cable Operator with a letter from the Customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

1. At any time a Customer or prospective Customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the Customer):

a. Products and services offered by the Cable Operator, including its channel lineup;

b. The Cable Operator's complete range of service options and the prices for these services;

- c. The Cable Operator's billing, collection and disconnection policies;
 - d. Privacy rights of Customers;
 - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
 - f. Use and availability of parental control/lock out device;
 - g. Special services for Customers with disabilities;
 - h. Days, times of operation, and locations of the service centers;
2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by CCUA and the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the CCUA or Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a Customer, Cable Operator may fulfill Customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to Customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.
4. Copies of notices provided to the Customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority and the CCUA.
5. A Cable Operator shall provide Customers with written notification of any change in rates for nondiscretionary Cable Services, and for service tier changes that result in a deletion of programming from a Customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a Customer has subscribed to, at the time the change in rates are announced by the Cable Operator.
6. All officers, agents, and employees of the Cable Operator or its Contractors or Subcontractors who are in personal contact with Customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually

identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with Customers or public employees, a supervisor must be able to communicate clearly with the Customer or public employee. Every vehicle of a Subcontractor or Contractor shall be labeled with the name of the Contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a Customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the Customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the Customer before the actual work is performed.

F. Customer Privacy

1. Notice to Customers Regarding Personally Identifiable Information; Definitions

(1) At the time of entering into an agreement to provide any Cable Service or Other Service to a Customer and at least once a year thereafter, the Cable Operator shall provide notice in the form of a separate, written statement to such Customer which clearly and conspicuously informs the Customer of—

(A) the nature of Personally Identifiable Information collected or to be collected with respect to the Customer and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the Cable Operator;

(D) the times and place at which the Customer may have access to such information in accordance with subsection (4) of this section; and

(E) the limitations provided by this section with respect to the collection and disclosure of information by the Cable Operator and the right of the Customer under 47 U.S.C. §§ 551(f) and (h) to enforce such limitations.

In the case of Customers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section F:

(A) the term “Personally Identifiable Information” does not include any record of aggregate data that does not identify particular persons;

(B) the term “Other Service” includes any wire or radio communications service provided using any of the facilities of the Cable Operator that are used in the provision of Cable Service; and

(C) the term “Cable Operator” includes, in addition to persons within the definition of Cable Operator, above, any person or group of persons who

(i) provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System

(ii) otherwise controls or is responsible for, through any arrangement, the management and operation of the Cable System;

(iii) is owned or controlled by, or under common ownership or control with, the Cable Operator; and

(iv) provides any wire or radio communications service.

2. Collection of Personally Identifiable Information Using Cable System

(1) Except as provided in paragraph (2) below, a Cable Operator shall not use the Cable System to collect Personally Identifiable Information concerning any Customer without the prior written or electronic consent of the Customer concerned.

(2) A Cable Operator may use the Cable System to collect such information in order to—

(A) obtain information Necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer; or

(B) detect unauthorized reception of cable communications.

3. Disclosure of Personally Identifiable Information

(1) Except as provided in paragraph (2) below, a Cable Operator shall not disclose Personally Identifiable Information concerning any Customer without the prior written or electronic consent of the Customer concerned and shall take such actions as are Necessary to prevent unauthorized access to such information by a person other than the Customer or Cable Operator.

(2) A Cable Operator may disclose such information if the disclosure is—

(A) Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer;

(B) subject to 47 U.S.C. §§ 551 (h) (Disclosure of information to governmental entity pursuant to court order), made pursuant to a court order authorizing such disclosure, if the Customer is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of Customers to any Cable Service or Other Service, if—

(i) the Cable Operator has provided the Customer the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the Customer of a Cable Service or Other Service provided by the Cable Operator, or

(II) the nature of any transaction made by the Customer over the Cable System of the Cable Operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, U.S.C. , except that such disclosure shall not include records revealing Customer selection of video programming from a Cable Operator.

4. Customer Access to Information

A Customer shall be provided access to all Personally Identifiable Information regarding that Customer that is collected and maintained by a Cable Operator. Such information shall be made available to the Customer at reasonable times and at a convenient place designated by such Cable Operator. A Customer shall be provided reasonable opportunity to correct any error in such information.

G. Safety

A Cable Operator shall install and locate its facilities, Cable System, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are Necessary to remove or eliminate any unsafe condition.

H. Cancellation of New Services

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer's account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

IV. COMPLAINT PROCEDURE

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in Writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the Necessary procedures for filing such complaint with the Franchising Authority.
5. A Cable Operator shall immediately report all customer Escalated Complaints that it does not find valid to the Franchising Authority.
6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

B. Complaints to the Franchising Authority

1. Any Customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The Customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The Customer shall make such filing and notification within thirty (30) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after with the last response to the Customer from the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the Customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the Customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem Necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the Customer complaint, or , if further evidence has been requested, after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

D. Verification of Compliance

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

E. Procedure for Remediating Violations

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order, after further hearing, such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter; and/or

d. Grant a specific solution as determined by the Franchising Authority; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its Subcontractors in accordance with Applicable Law; and/or

f. Pursue any other legal or equitable remedy available under the Franchise Agreement or Applicable Law.

3. Any assessment or remedy shall not constitute a waiver by the Franchising Authority of any other right or remedy it may have under the Franchise Agreement or Applicable Law including any right to recover from the Cable Operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the Franchising Authority by reason of, or arise out of non-compliance with these standards.

EXHIBIT B

Report Form

City of Boulder
 Comcast Quarterly Executive Summary of Escalated Complaints
 Referenced in Franchise Agreement Section 7.6 (B)(4)
 For the Quarter Ending _____

<u>Type of Complaint</u>	<u>No. of Calls</u>
Accessibility	
Billing, Credit and Refunds	
Courtesy	
Drop Bury	
Installation	
Notices/Easement Issues (Non-Rebuild)	
Pedestal	
Problem Resolution	
Programming	
Property Damage (Non-Rebuild)	
Rates	
Rebuild/Upgrade Damage	
Rebuild/Upgrade Notices/Easement Issues	
Reception/Signal Quality	
Safety	
Service and Install Appointments	
Service Interruptions	
Serviceability	
<u>TOTAL</u>	

Compliments	



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P.O. Box 791
Boulder, CO 80302

Dear Ms. Brautigam:

The purpose of this letter agreement is to set forth several commitments between Comcast of Colorado IV, LLC (“Comcast”) and the city of Boulder, Colorado (the “City”) that are in addition to the Franchise Agreement to be adopted by Ordinance (the “Franchise Agreement”). These items have been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relate to the unique community needs that exist in the City. This letter agreement shall take effect on May 1, 2015, and shall terminate at 11:59 p.m. on April 30, 2025.

- A. **Channel Capacity and Use – High Definition (“HD”) Digital Access Channels:** Pursuant to Section 12.2 of the Franchise, Comcast is required to provide at no cost to the City one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings. In addition to those Section 12.2 requirements, and at the time that the City activates an HD Digital Access Channel pursuant to Section 9.2 of the Franchise, Comcast shall provide to the City, at no cost to the City, one (1) outlet of basic HD service and one (1) HD cable box to be located at the Channel 8 office, for the sole purpose and use by the City to monitor the HD Digital Access Channel’s signal.
- B. **Promotion of PEG Programming:** Following the Effective Date of the Franchise, Comcast will work with the City to assist in the promotion of PEG programming, which includes the following:
1. Upon reasonable advanced notice but not more than two (2) times during the term of the Franchise, Comcast will provide one (1) cable box message to Subscribers’ cable boxes that receive messages per quarter per year for a total of four (4) messages in a calendar year;
 2. Upon reasonable advanced notice but not more than three (3) times during the term of the Franchise, Comcast will include one (1) written bill message to Subscribers as part of their bills, provided that space for such bill message is available; and
 3. Comcast shall use reasonable efforts to accommodate PEG promotional spots received from the City on a reasonable basis in Comcast’s cross-channel ad avails, up to a minimum of 25, 30 second spots per year, with the intention of accommodating additional spots if available at Comcast’s reasonable discretion. Any such ad avails provided for PEG promotional spots shall be at no cost to the City or its designated access providers; however, the City or its designated access

provider shall be responsible for all the necessary production costs and shall deliver the ad avail in the format and method requested by Comcast.

The terms and conditions of this letter agreement are binding upon the City and Comcast and their successors and assigns. Comcast agrees that a violation of these terms by Comcast may be considered by the City as a material violation of the Franchise, subject to the provisions of Section 13 of the Franchise. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Sincerely,
Comcast of Colorado IV, LLC

By: _____
Its: _____
Date: _____

Acknowledged and agreed to this ___ day of _____ 2015.

City of Boulder, Colorado

By: _____
Its: _____
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE April 7, 2015

AGENDA TITLE: Second reading and consideration of a motion to adopt and order published by title only Ordinance No. 8038 allowing for production and sale of certain foods in residential zone districts, amending Section 9-6-3(e) “Specific Use Standards – Residential Uses”; amending Section 9-9-21 “Signs” and adding a new Chapter 6-17 “Cottage Foods and Fresh Produce”

PRESENTERS

Jane S. Brautigam, City Manager
David Driskell, Executive Director, Community Planning and Sustainability
Thomas A. Carr, City Attorney
Carl Castillo, Policy Advisor

EXECUTIVE SUMMARY

The purpose of this agenda item is for City Council to consider a proposed ordinance (**Attachment A**) that would allow for the production and sale of certain food products in residential zone districts.

In 2012, Colorado enacted House Bill 12-048, the Colorado Cottage Foods Act, subsequently modified in 2013 by House Bill 13-1158. The act significantly decreased the regulation of the sale of certain non-potentially hazardous food products sold by producers directly to consumers in certain locations, including at the producer’s residence. The intent was to increase the number of venues where fresh locally sourced foods could be made available on a small-scale basis without the need for a license from the Colorado Department of Public Health and Environment nor inspection from the state or county departments of public health. However, while public health agencies were removed as a barrier to cottage foods sales, local governments retained their local land use authority to prohibit such sales. Consequently, municipalities, like Boulder, whose residential zoning prohibits retail sales as a home occupation, create a barrier to cottage foods and fresh produce sales that must be removed to allow the use.

At the 2015 Boulder City Council retreat, Council directed the city attorney to develop an ordinance that would allow for cottage foods and fresh produce sales in residential districts of the city. The proposed ordinance allows for such sales by creating an exemption to certain provisions of the home occupation section of the land use code and by allowing for signs no larger than two feet square, all conditioned on the user: when selling cottage foods, complying with Colorado’s Cottage Foods Act when such products are grown on the premise where the sales are to occur and produced in a home kitchen similarly located,; when selling fresh produce, offering only raw whole produce grown in a garden on the premise where the sales are to occur, obtaining a city business license and only offering products for sale between the hours of 7:00 a.m. and dusk. The ordinance also provides authority for the city manager to impose rules if necessary to address unintended consequences.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to adopt on second reading and order published by title only ordinance number 8038, allowing for production and sale of certain foods in residential zone districts, amending Section 9-6-3(e) “Specific Use Standards – Residential Uses”; amending Section 9-9-21 “Signs” and adding a new Chapter 6-17 “Cottage Foods and Fresh Produce”

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Sale of locally sourced cottage foods and produce could have a beneficial impact on our community. Relatively small scale sales could provide additional income to some residents and promote some additional economic activity.
- Environmental: Food production generally has positive or at least few negative environmental impacts.
- Social: The ability to purchase and enjoy food produced closer to home has beneficial social impacts. There are also positive social impacts associated with gardening and animal husbandry.

OTHER IMPACTS

- Fiscal-Budgetary: None anticipated.
- Staff work necessary to implement this provision should be minimal and can be accomplished within normal work programs.

PUBLIC INPUT

The proposed ordinance originated from a community effort brought forth at a series of city council meetings. At those meetings, community members emphasized the importance of increasing the availability of locally grown food. At the 2015 Council

Retreat, the City Council considered placing this issue on the work plan for the Department of Community Planning and Sustainability. Unfortunately, other priorities precluded the dedication of any significant department resources to this project in 2015. Because of the limited expected impact of residential food sales, Council decided instead to direct the city attorney to draft an ordinance that would allow limited food sales in all residential districts. Accordingly, there has been no additional public input solicited on this matter. However, since Council's decision was reported by the media, Council has received over 20 emails supporting a cottage foods ordinance. Several of these emails included detailed proposals for changes to the ordinance. Staff has reviewed the emails. However, the changes suggested are not consistent with Council's intent for a simple and quick project.

BOARD AND COMMISSION INPUT

The Planning Board considered this ordinance at its March 5, 2015 meeting. The Board recommended one change to the proposed ordinance. Existing section 9-6-3(e)(1)(C) provides as follows:

(C) The total area used for such purposes does not exceed one-half the first floor area of the user's dwelling unit.

The proposed ordinance does not exempt this requirement for sales of cottage foods and fresh produce. Thus, under the proposed ordinance, any area used for the production, processing and sale of cottage foods or fresh produce would be limited to a total area that does not exceed one-half the first floor area of the dwelling unit. This would apply to areas inside and outside of a dwelling unit, including areas used for chicken coops and bee hives as well as garden space used to produce fruits or vegetables.

The Planning Board recommended that gardens be partially or fully exempted from this requirement, based on concerns expressed by some in the community that such limit would unnecessarily restrict the size of gardens used to grow produce for sale. With its recommended change, the Planning Board voted unanimously to support the cottage foods ordinance.

Staff has a concern that in the absence of some limitation, a person could convert his or her entire property to a farming operation that might be inconsistent with a residential neighborhood. Accordingly, staff does not support the Planning Board's proposal to fully exempt gardening from the limitation on square footage. Instead, staff would look towards Council's direction on whether a more specific standard may be applicable for such garden uses. At the Council Agenda Committee a council member asked whether the limitation on sales of no more than \$5,000 per product category would effectively limit the size of gardens. The \$5,000 limit applies only to cottage foods. It does not apply to sales of fresh produce and thus would not limit the size of a garden.

At first reading, Council directed staff to propose alternatives in response to Planning Board's recommendations. Five options are discussed below.

BACKGROUND

According to a [2013 review](#) by the Harvard Food Law and Policy Clinic, 42 states have enacted laws that allow some level of cottage foods operations. Almost all these laws have been enacted in the past five years as the public demand for access to local food has exploded. Colorado's passage of its own law in 2012 was part of this national movement. Under Colorado's Cottage Foods Act, foods allowed to be produced and sold include spices, teas, dehydrated produce, nuts, seed, honey, jams, jellies, preserves, fruit butter, candies, certain baked goods and whole eggs (250 dozen per month maximum). While a retail license or wholesale food registration is not required for sale of these goods directly to consumers, there are labeling requirements, a limitation on the amount of annual revenue that may be generated for each category of food (\$5,000), a requirement for producers to take a food safety course (currently offered by Colorado State University), and a prohibition on selling value added fruits and vegetables (e.g., prepped, washed, cut and/or bagged).

In the 2012 bill that created the Colorado Cottage Foods Act, a legislative declaration was included by the General Assembly encouraging "*entities that regulate, affect or are interested in local food production and related matters to examine ways in which to revised zoning ordinances, building and health codes, and other legal barriers to accommodate and encourage the growing and use of local produce and the production of value-added foods that use local produce.*" (SB12-048, Section 1(1)) Heeding that advice, several Colorado municipalities have since made zoning changes to allow for cottage foods and fresh produce sales in residential areas, including the City and County of Denver in 2014 and the City of Arvada in 2012. Both cities report having received no complaints about residential cottage foods sales since they became legal.

While Boulder has until now not allowed cottage foods or fresh produce sales in residential areas, it has long allowed fresh produce to be grown and processed in residential zoned areas. Moreover, the city code does not currently restrict raising poultry or bees. There is a prohibition on keeping swine, hogs or pigs. To keep a horse, goat, sheep, cow, llama, burro, or other equine or bovine animal a person must have a half-acre of land per animal. Section 6-1-41, B.R.C. 1981. Moreover, at City Council's January 2014 retreat, the promotion of local food production and consumption was identified as a city priority. This was followed by the 2015 Boulder City Council retreat, where Council directed staff to develop an ordinance that would allow for cottage foods and fresh produce sales in residential districts of the city.

PROPOSED ORDINANCE

The proposed ordinance would add a new section to Chapter 6, "Health, Safety and Sanitation," B.R.C. 1981 regarding "Cottage Foods and Fresh Produce Sales" and amend two existing sections of the land use code (Chapter 9). Planning Board review and recommendation to Council is required due to the changes to the land use code.

The new Chapter 6-17, "Cottage Foods and Fresh Produce Sales," B.R.C. 1981 sets forth the requirements for a cottage foods home occupation. These requirements are as follows:

- When engaged in sale of cottage foods, comply with all provisions of the Colorado Cottage foods Act and have entirely produced the cottage foods in a home kitchen located on the same residential premise at which the sales are to occur from
- When engaged in sale of fresh produce, offer only raw whole produce items grown in a residential garden located on the residential premise at which the sales are to occur from, with such fresh produce being free of any processing
- Obtain a City of Boulder Sales and Use Tax License
- Offer products for sale only between 7:00 a.m. and dusk.

The new chapter also authorizes the city manager to make any rules that might be necessary. This will allow for flexibility for staff to address any unanticipated consequences of the new ordinance.

With respect to land use, the code permits certain home occupations in residential zone districts pursuant to Section 9-6-3(e), B.R.C. 1981 (“Specific Use Standards – Residential Uses”). Section 9-6-3(e) includes certain restrictions that effectively prohibit the sale of cottage foods and fresh produce. These include the following:

- Subsection 1(A) – The use must be conducted entirely within a building.
- Subsection 1(D) – There is no change to the outside appearance of the dwelling, including advertising signs.
- Subsection 1(E) – There are no sales other than incidental retail sales.
- Subsection 1(F) – There is no exterior storage of material or equipment.
- Subsection 1(G) – There is nothing used that creates any objectionable condition outside of the dwelling unit.

The proposed ordinance would exempt cottage foods operations from these requirements. To be exempt the use would have to conform to the requirements of the new Chapter 6-17 described below. Home occupations are a conditional use. The proposed ordinance would make Cottage Foods an allowed use. The proposed ordinance also would amend the sign code (found within the land use code). The sign code currently permits certain signs in residential zone districts. Advertising signs require a sign permit. The proposed ordinance would amend Section 9-9-21(c) to allow cottage foods signs without obtaining a sign permit. The signs must meet the size limits set forth in table 9-13 (*i.e.*, two square feet).

OPTIONS

Staff has prepared five options to address a concern raised regarding the application of home occupation size limits to gardens. As is noted above, current code limits home occupations to an area not in excess of one-half of the dwelling unit’s ground floor area. Staff did not recommend excluding sales of either cottage foods or fresh produce from this restriction to limit the impact on neighbors. At Council’s direction, staff has prepared the following options:

- **Option A**

Option A would clarify that the size limit restriction only applies to both cottage food production and agricultural activities related to production of food for sale. Staff believes that the existing language is sufficient to make this distinction, because the limit applies only to area used for the home occupation purpose. Nevertheless, option A would clarify that the limitation would apply only to cottage foods production and to so much of a garden used to produce food for sale.

- **Option B**

Option B would remove gardens from the size restrictions of section 9-6-3(e)(1)(C) and instead limit produce gardens to no more than 50% of the permeable surface of the lot when fresh produce is being sold from the premise. This expands on the current limitation. Such a restriction should be relatively simple to enforce and serve the purpose of limiting the impacts on neighbors, which could result from having an entire lot in a residential area dedicated to farming.

- **Option C**

Option C would again remove produce gardens from the size restrictions of section 9-6-3(e)(1)(C), and allow them to occupy a full lot, but would require a garden in excess of 50% of the permeable surface area to comply with some of the restrictions imposed on Community Gardens. Those restrictions are as follows:

(a) Community Gardens: The following criteria apply to community garden uses:

* * *

(2) Use of manure. No person shall store or use manure in a community garden unless it is dried and unless it is tilled into the ground within forty-eight hours of delivery.

(3) Water conveyance. The site must be designed and maintained so that water is conveyed off-site into a city right of way or drainage system without adversely affecting adjacent property.

(4) Water conservation. No person shall use sprinkler irrigation between the hours of 10 a.m. and 6 p.m. Drip irrigation or watering by hand with a hose may be done at any time.

(5) Mechanized equipment. No person shall operate mechanized equipment, including, without limitation, lawn mowers, roto-tillers, garden tractors, and motorized weed trimmers, between the hours of 8 p.m. and 8 a.m. Monday through Friday, and between the hours of 8 p.m. and 10 a.m. Saturday and Sunday.

(6) Maintenance. No person shall fail to maintain the community garden in an orderly manner, including necessary watering, pruning, pest

control, and removal of dead or diseased plant materials and otherwise in compliance with the provisions of title 6, "Health, Safety and Sanitation," B.R.C. 1981.

(7) Trash/compost. No person shall fail to screen trash and compost receptacles from adjacent properties through landscaping, fencing, or storage within structures and remove trash and compost from the site weekly. Compost piles shall be set back at least ten feet from any property line.

(8) Setbacks. Structures accessory to the community garden use, such as accessory storage or utility buildings, gazebos, trellises, or accessory greenhouse structures, and activity areas exclusive of garden plots, shall comply with all applicable principal structure form and bulk standards in the applicable zone district per Chapter 9-7, "Form and Bulk Standards," B.R.C. 1981. No person shall construct a garden trellis that exceeds eight feet in height within any setback on the property.

§9-6-4, B.R.C. 1981, ("Agriculture and Natural Resource Uses").

- **Option D.**

Option D would eliminate the application of subsection C to gardens without creating any alternative limitation. Staff does not support this option. There is a rationale to support unlimited farming in residential areas. "Crop production" currently is an allowed use in all residential districts. *See* Table 6-1 ("Allowed Uses"). Crop production is defined as "the commercial growing of horticultural materials such as vegetables, fruit trees, flowers, ornamental plants, and sod for wholesale sales." § 9-16-1, B.R.C 1981 ("General Definitions"). The question is whether similar exemption should be given to this new use.

- **Option E.**

At the Council Agenda Committee meeting, council members questioned whether the ordinance would prohibit the sale of products unless all of the ingredients were produced on the property. Council members expressed concern that this would preclude residents from selling products such as jam, which would probably include sugar and pectin which would not be produced on the property. Option E proposes an amendment to section 6-17-2(b) to allow for sale of products which include small amounts of ingredients not produced on the property.

ATTACHMENTS

Attachment A - Proposed Ordinance

Attachment B – Option A

Attachment C – Option B

Attachment D – Option C

Attachment E – Option D

Attachment F - Option E

ORDINANCE NO. 8038

AN ORDINANCE AMENDING SECTION 9-6-3, "SPECIFIC USE STANDARDS – RESIDENTIAL USES," B.R.C. 1981, EXEMPTING COTTAGE FOODS AND FRESH PRODUCE FROM CERTAIN USE LIMITATIONS; ADDING A NEW CHAPTER 6-17 "COTTAGE FOODS AND FRESH PRODUCE SALES" SETTING FORTH REQUIREMENTS FOR SALES OF COTTAGE FOODS AND FRESH PRODUCE; AMENDING SECTION 9-9-21, "SIGNS," B.R.C. 1981 TO ALLOW FOR COTTAGE FOODS AND FRESH PRODUCE SIGNS AND SETTING FORTH RELATED DETAILS.

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

Section 1. A new Chapter 6-17 is added as follows:

Chapter 6-17 Cottage Foods and Fresh Produce Sales

6-17-1. - Legislative Intent and Purpose.

- (a) The purpose of this chapter is to protect the public health, safety, and welfare of the residents by promoting local foods to create a healthier, more livable community.
- (b) Findings. The city council finds as follows:
 - (1) Locally grown food can provide a healthy alternative to commercially produced food;
 - (2) Encouraging a diverse local agricultural economy can provide financial benefit to those engaged in activities such as gardening, beekeeping, preparing preserves and maintaining chickens; and
 - (3) It is important to protect the city’s neighborhoods from adverse impacts associated with the foregoing activities.

6-17-2. – Requirements.

Requirements. To engage in the home occupation of cottage food and fresh produce production and sales, a person must meet the following requirements:

- (a) Comply with all provisions of the Colorado Cottage Food Act as codified at C.R.S. § 25-4-1614;
- (b) Cottage food products offered for sale shall be limited to products produced on the same premises from which the sales occur;

- 1 (c) Fresh produce offered for sale shall be limited to raw, whole produce items grown on the
2 premises. The fresh produce shall not be processed or altered beyond the minimum
3 required for a harvest cut and for rinsing off of soil and debris. Prohibited alterations
4 include any additional cutting, slicing or juicing;
- 5 (d) Obtain a City of Boulder Sales and Use Tax License as required by Section 3-2-11,
6 "Sales and Use Tax License," B.R.C. 1981;
- 7 (e) Marijuana shall not be considered a cottage food product or fresh produce under this
8 chapter. The cultivation and sale of marijuana is governed by Chapter 6-14, "Medical
9 Marijuana," B.R.C. 1981 and Chapter 6-16, "Recreational Marijuana," B.R.C. 1981.
10 Nothing in this chapter is intended to supersede those provisions; and
- 11 (f) Offer products for sale only between the hours of 7:00 a.m. and dusk.

9 **6-17-3. – Rulemaking.**

10 Rulemaking Authority. The city manager may promulgate such rules as the manager considers
11 necessary to implement and enforce this chapter. All such rules shall be adopted in accordance
12 with the procedures set forth in Chapter 1-4, "Rulemaking," B.R.C. 1981.

12 Section 2. Section 9-6-3(e) B.R.C. 1981 is amended to read:

13 **9-6-3. - Specific Use Standards – Residential Uses.**

14 (e) Home Occupations:

15 (1) Standards: A home occupation is a permitted accessory use if the following
16 conditions are met:

17 (A) Such use is conducted entirely within a principal or accessory building and is not
18 carried on by any person other than the inhabitants living there.

19 (B) Such use is clearly incidental and secondary to the residential use of the dwelling
20 and does not change the residential character thereof.

21 (C) The total area used for such purposes does not exceed one-half the first floor area
22 of the user's dwelling unit.

23 (D) There is no change in the outside appearance of the dwelling unit or lot
24 indicating the conduct of such home occupation, including, without limitation,
25 advertising signs or displays.

(E) There is no on-site sale of materials or supplies except incidental retail sales.

(F) There is no exterior storage of material or equipment used as a part of the home
occupation.

1 (G) No equipment or process is used in such home occupation that creates any glare,
2 fumes, odors or other objectionable condition detectable to the normal senses at
3 the boundary of the lot if the occupation is conducted in a detached dwelling
unit, or outside the dwelling unit if conducted in an attached dwelling unit.

4 (H) No traffic is generated by such home occupation in a volume that would create a
5 need for parking greater than that which can be accommodated on the site or
which is inconsistent with the normal parking usage of the district.

6 (2) Cottage Food and Fresh Produce Exception. A home occupation use meeting the
7 requirements of Chapter 6-17 "Cottage Foods and Fresh Produce," B.R.C. 1981, is
8 exempt from the requirements of subparagraphs (1)(A), (D), (E), (F) and (G) above.
9 Such use shall be permitted as an allowed use in all zone districts in which a home
10 occupation is permitted as a conditional use.

11 (32) Prohibitions: No person shall engage in a home occupation except in conformance
12 with all of the requirements of paragraph (e)(1) of this section, except as provided in
13 Paragraph (e)(2) of this section.

14 Section 3. Section 9-9-21(c), B.R.C. 1981 is amended to read:

15 **9-9-21. – Signs.**

16 (c) Signs Exempt From Permits:

17 (1) Specific Signs Exempted: The following signs are permitted in all zoning districts
18 and are exempt from the permit requirements of this section, but shall in all other
19 respects comply with the requirements of this code except as expressly excepted
20 below:

21 (A) Construction Warning: A sign not exceeding sixteen square feet erected by a
22 licensed construction contractor on property on which it is working to warn of
23 danger or hazardous conditions. Such sign is also exempt from the setback,
24 limitation on number of freestanding signs, and total sign area regulations of this
25 section.

(B) Flags: Up to three different flags per property, subject to the following
restrictions:

(i) The total area of all flags shall not exceed seventy square feet;

(ii) The area of each such flag shall be exempt from the sign area limitations of
paragraph (d)(2) of this section, but shall not exceed forty square feet, with no
one dimension of any flag greater than eight feet;

(iii) The flag pole or other structure on which such a flag is displayed shall be
treated as part of any building to which it is attached for all height
computations and not as an appurtenance or a part of the sign;

1 (iv) No freestanding flagpole shall exceed twenty feet in height outside of the
2 principal building setbacks or thirty-five feet in height within the principal
building setbacks; and

3 (v) No flag bearing an explicit commercial message shall constitute an exempt
4 flag.

5 (C) Garage Sale: One garage sale sign per property in an agricultural or residential
6 district placed on private property owned or leased by the person holding the
garage sale, for a period not to exceed ten consecutive days and not more than
7 twice in a calendar year. The sign must be within the total signage permitted for
the parcel.

8 (D) Lost Animal: One lost animal sign per property placed on private property with
9 the permission of the owner for a period not to exceed ten consecutive days, in
an agricultural or residential district and within the total signage permitted for
such parcel.

10 (E) Noncommercial: A work of art that in no way identifies or advertises a product,
11 service, or business or impedes traffic safety, a political sign, or any other
noncommercial sign. [15]

12 (F) Private Traffic: A private traffic directional sign guiding or directing vehicular or
13 pedestrian traffic onto or off of a property or within a property that does not
exceed three square feet per face in area and six feet in height, does not contain
14 any advertising or trade name identification, and is not illuminated, internally
illuminated, or indirectly illuminated. But a private traffic control sign that
15 conforms to the standards of the state traffic control manual defined in
subsection 7-1-1(a), B.R.C. 1981, may exceed three square feet per face in area
16 but shall not exceed seven square feet per face or eight feet in height. Such sign
also is exempt from the setback, limitation on number of freestanding signs, and
17 total sign area regulations of this section. [16]

18 (G) Real Estate: One temporary, non-illuminated real estate sign per property or per
19 dwelling unit street frontage, set back at least eighteen inches from the nearest
public sidewalk, that does not exceed six square feet per face in area and a total
20 of twelve square feet in area and four feet in height in the RR, RE, RL, RM,
RMX, RH, and MH zones or sixteen square feet per face and a total of thirty-two
21 square feet in area and seven feet in height in any other zone, but only if the sign
remains in place no more than seven days after sale or rental of the subject
22 property. The area of such a sign shall not be deducted from the allowable sign
area or number of freestanding signs for the building or business unit. If the
23 property owner or tenant is not using this real estate sign allowance, such person
in possession of the property may place a noncommercial sign conforming with
24 these limitations in lieu of such a real estate sign.

- 1 (H) Sign Required by Law: A sign required or specifically authorized for a public
2 purpose by any federal, state, or city law of any type, including, without
3 limitation, the number, area, height above grade, location or illumination
4 authorized by the law under which such sign is required or authorized. But no
5 such sign may be placed in the public right-of-way unless specifically authorized
6 or required by law. Except for a warning sign or barricade of a temporary nature,
7 any such sign shall be securely affixed to the ground, a building, or another
8 structure. So much of such a sign as is required by law also is exempt from all
9 other provisions of this section.
- 10 (I) Residential Wind Sign: A wind sign in a residential or an agricultural zone, within
11 the limitations set forth in subsection (d) of this section, notwithstanding the
12 prohibition of subparagraph (b)(3)(Q) of this section.
- 13 (J) Utility Warning: A sign not exceeding sixteen square feet erected by a public
14 utility within a utility easement on property on which it is working to warn of
15 danger or hazardous conditions or to indicate the presence of underground
16 cables, gas lines, and similar devices. Such a sign also is exempt from the
17 setback, limitation on number of freestanding signs, and total sign area
18 regulations of this section.
- 19 (K) Vehicular: A sign displayed on a motor vehicle if not prohibited by this section.
- 20 (L) Window: A non-illuminated window sign of no more than four square feet in
21 area and placed no more than twenty-five feet above finished grade, if the total
22 area of such signs fills less than twenty-five percent of the area of the
23 architecturally distinct window, and such signs do not exceed twenty-five percent
24 of the total allowable sign area for the building or business unit. The area of a
25 window sign not exempt from permit requirements under this subparagraph is
calculated as a part of and limited by the total allowable sign area for the
premises.
- (M) Cottage Foods and Fresh Produce Signs. On any premises meeting the
requirements of Chapter 6-17, a sign meeting the size restrictions applicable to
residential detached dwellings in table 9-13 of this section.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

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

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INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 17th day of March, 2015.

Mayor

Attest:

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this 7th day of April, 2015.

Mayor

Attest:

City Clerk

Option A

Replace existing section 2 with the following:

Section 2. Section 9-6-3(e) B.R.C. 1981 is amended to read:

9-6-3. - Specific Use Standards – Residential Uses.

(e) Home Occupations:

(1) Standards: A home occupation is a permitted accessory use if the following conditions are met:

- (A) Such use is conducted entirely within a principal or accessory building and is not carried on by any person other than the inhabitants living there.
- (B) Such use is clearly incidental and secondary to the residential use of the dwelling and does not change the residential character thereof.
- (C) The total area used for such purposes does not exceed one-half the first floor area of the user's dwelling unit.
- (D) There is no change in the outside appearance of the dwelling unit or lot indicating the conduct of such home occupation, including, without limitation, advertising signs or displays.
- (E) There is no on-site sale of materials or supplies except incidental retail sales.
- (F) There is no exterior storage of material or equipment used as a part of the home occupation.
- (G) No equipment or process is used in such home occupation that creates any glare, fumes, odors or other objectionable condition detectable to the normal senses at the boundary of the lot if the occupation is conducted in a detached dwelling unit, or outside the dwelling unit if conducted in an attached dwelling unit.
- (H) No traffic is generated by such home occupation in a volume that would create a need for parking greater than that which can be accommodated on the site or which is inconsistent with the normal parking usage of the district.

(2) Cottage Food and Fresh Produce Exception. A home occupation use meeting the requirements of Chapter 6-17 “Cottage Foods and Fresh Produce,” B.R.C. 1981, is exempt from the requirements of subparagraphs (1)(A), (D), (E), (F) and (G) above. Subparagrah (1)(C) applies only to the area used for production of cottage foods and to the portion of a garden used for to grow produce for sale. Such use shall be permitted as an allowed use in all zone districts in which a home occupation is permitted as a conditional use.

~~(32)~~ Prohibitions: No person shall engage in a home occupation except in conformance with all of the requirements of paragraph (e)(1) of this section, except as provided in Paragraph (e)(2) of this section.

Option B

Amend section 1 to revise new section 6-17-2 as follows:**6-17-2. – Requirements.**

Requirements. To engage in the home occupation of cottage food and fresh produce production and sales, a person must meet the following requirements:

- (a) Comply with all provisions of the Colorado Cottage Food Act as codified at C.R.S. § 25-4-1614;
- (b) Cottage food products offered for sale shall be limited to products produced on the same premises from which the sales occur;
- (c) Fresh produce offered for sale shall be limited to raw, whole produce items grown on the premises. The fresh produce shall not be processed or altered beyond the minimum required for a harvest cut and for rinsing off of soil and debris. Prohibited alterations include any additional cutting, slicing or juicing;
- (d) Obtain a City of Boulder Sales and Use Tax License as required by Section 3-2-11, “Sales and Use Tax License,” B.R.C. 1981;
- (e) Marijuana shall not be considered a cottage food product or fresh produce under this chapter. The cultivation and sale of marijuana is governed by Chapter 6-14, “Medical Marijuana,” B.R.C. 1981 and Chapter 6-16, “Recreational Marijuana,” B.R.C. 1981. Nothing in this chapter is intended to supersede those provisions; and
- (f) Offer products for sale only between the hours of 7:00 a.m. and dusk.
- (g) Have any garden used for fresh produce production be equal to 50% or less of the permeable surface of the residential lot.

Replace existing section 2 with the following:

Section 2. Section 9-6-3(e) B.R.C. 1981 is amended to read:

9-6-3. - Specific Use Standards – Residential Uses.

- (e) Home Occupations:
 - (1) Standards: A home occupation is a permitted accessory use if the following conditions are met:

- (A) Such use is conducted entirely within a principal or accessory building and is not carried on by any person other than the inhabitants living there.
- (B) Such use is clearly incidental and secondary to the residential use of the dwelling and does not change the residential character thereof.
- (C) The total area used for such purposes does not exceed one-half the first floor area of the user's dwelling unit.
- (D) There is no change in the outside appearance of the dwelling unit or lot indicating the conduct of such home occupation, including, without limitation, advertising signs or displays.
- (E) There is no on-site sale of materials or supplies except incidental retail sales.
- (F) There is no exterior storage of material or equipment used as a part of the home occupation.
- (G) No equipment or process is used in such home occupation that creates any glare, fumes, odors or other objectionable condition detectable to the normal senses at the boundary of the lot if the occupation is conducted in a detached dwelling unit, or outside the dwelling unit if conducted in an attached dwelling unit.
- (H) No traffic is generated by such home occupation in a volume that would create a need for parking greater than that which can be accommodated on the site or which is inconsistent with the normal parking usage of the district.

(2) Cottage Food and Fresh Produce Exception. A home occupation use meeting the requirements of Chapter 6-17 "Cottage Foods and Fresh Produce," B.R.C. 1981, is exempt from the requirements of subparagraphs (1)(A), (D), (E), (F) and (G) above. Gardens, which are in compliance with § 6-17-2(g) B.R.C 1981 ("Requirements"), are exempt from subparagraph (C) above. Such use shall be permitted as an allowed use in all zone districts in which a home occupation is permitted as a conditional use.

(32) Prohibitions: No person shall engage in a home occupation except in conformance with all of the requirements of paragraph (e)(1) of this section, except as provided in Paragraph (e)(2) of this section.

Option C

Amend section 1 to revise new section 6-17-2 as follows:

6-17-2. – Requirements.

Requirements. To engage in the home occupation of cottage food and fresh produce production and sales, a person must meet the following requirements:

- (a) Comply with all provisions of the Colorado Cottage Food Act as codified at C.R.S. § 25-4-1614;
- (b) Cottage food products offered for sale shall be limited to products produced on the same premises from which the sales occur;
- (c) Fresh produce offered for sale shall be limited to raw, whole produce items grown on the premises. The fresh produce shall not be processed or altered beyond the minimum required for a harvest cut and for rinsing off of soil and debris. Prohibited alterations include any additional cutting, slicing or juicing;
- (c) Obtain a City of Boulder Sales and Use Tax License as required by Section 3-2-11, “Sales and Use Tax License,” B.R.C. 1981;
- (d) Marijuana shall not be considered a cottage food product or fresh produce under this chapter. The cultivation and sale of marijuana is governed by Chapter 6-14, “Medical Marijuana,” B.R.C. 1981 and Chapter 6-16, “Recreational Marijuana,” B.R.C. 1981. Nothing in this chapter is intended to supersede those provisions; ~~and~~
- (e) Offer products for sale only between the hours of 7:00 a.m. and dusk; ~~and~~;
- (f) Have any garden used for fresh produce production be equal to or less than 50% of the permeable surface of the lot area, unless the garden meets the following requirements:
 - (1) Use of manure. No person shall store or use manure unless it is dried and unless it is tilled into the ground within forty-eight hours of delivery.
 - (2) Water conveyance. The site must be designed and maintained so that water is conveyed off-site into a city right of way or drainage system without adversely affecting adjacent property.
 - (3) Water conservation. No person shall use sprinkler irrigation between the hours of 10 a.m. and 6 p.m. Drip irrigation or watering by hand with a hose may be done at any time.
 - (4) Mechanized equipment. No person shall operate mechanized equipment, including, without limitation, lawn mowers, roto-tillers, garden tractors,

and motorized weed trimmers, between the hours of 8 p.m. and 8 a.m. Monday through Friday, and between the hours of 8 p.m. and 10 a.m. Saturday and Sunday.

- (5) Maintenance. No person shall fail to maintain the garden in an orderly manner, including necessary watering, pruning, pest control, and removal of dead or diseased plant materials and otherwise in compliance with the provisions of title 6, "Health, Safety and Sanitation," B.R.C. 1981.
- (6) Trash/compost. No person shall fail to screen trash and compost receptacles from adjacent properties through landscaping, fencing, or storage within structures and remove trash and compost from the site weekly. Compost piles shall be set back at least ten feet from any property line.
- (7) Setbacks. Structures accessory to the community garden use, such as accessory storage or utility buildings, gazebos, trellises, or accessory greenhouse structures, and activity areas exclusive of garden plots, shall comply with all applicable principal structure form and bulk standards in the applicable zone district per Chapter 9-7, "Form and Bulk Standards," B.R.C. 1981. No person shall construct a garden trellis that exceeds eight feet in height within any setback on the property.

Replace existing section 2 with the following:

Section 2. Section 9-6-3(e) B.R.C. 1981 is amended to read:

9-6-3. - Specific Use Standards – Residential Uses.

(f) Home Occupations:

- (1) Standards: A home occupation is a permitted accessory use if the following conditions are met:
- (A) Such use is conducted entirely within a principal or accessory building and is not carried on by any person other than the inhabitants living there.
- (B) Such use is clearly incidental and secondary to the residential use of the dwelling and does not change the residential character thereof.
- (C) The total area used for such purposes does not exceed one-half the first floor area of the user's dwelling unit.
- (D) There is no change in the outside appearance of the dwelling unit or lot indicating the conduct of such home occupation, including, without limitation, advertising signs or displays.

- (E) There is no on-site sale of materials or supplies except incidental retail sales.
- (F) There is no exterior storage of material or equipment used as a part of the home occupation.
- (G) No equipment or process is used in such home occupation that creates any glare, fumes, odors or other objectionable condition detectable to the normal senses at the boundary of the lot if the occupation is conducted in a detached dwelling unit, or outside the dwelling unit if conducted in an attached dwelling unit.
- (H) No traffic is generated by such home occupation in a volume that would create a need for parking greater than that which can be accommodated on the site or which is inconsistent with the normal parking usage of the district.

(2) Cottage Food and Fresh Produce Exception. A home occupation use meeting the requirements of Chapter 6-17 “Cottage Foods and Fresh Produce,” B.R.C. 1981, is exempt from the requirements of subparagraphs (1)(A), (D), (E), (F) and (G) above. Gardens, which are in compliance with § 6-17-2(g) B.R.C 1981 (“Requirements”), are exempt from subparagraph (C) above. Such use shall be permitted as an allowed use in all zone districts in which a home occupation is permitted as a conditional use.

(23) Prohibitions: No person shall engage in a home occupation except in conformance with all of the requirements of paragraph (e)(1) of this section, except as provided in Paragraph (e)(2) of this section.

Option D

Replace existing section 2 with the following:

Section 2. Section 9-6-3(e) B.R.C. 1981 is amended to read:

9-6-3. - Specific Use Standards – Residential Uses.

(g) Home Occupations:

(1) Standards: A home occupation is a permitted accessory use if the following conditions are met:

- (A) Such use is conducted entirely within a principal or accessory building and is not carried on by any person other than the inhabitants living there.
- (B) Such use is clearly incidental and secondary to the residential use of the dwelling and does not change the residential character thereof.
- (C) The total area used for such purposes does not exceed one-half the first floor area of the user's dwelling unit.
- (D) There is no change in the outside appearance of the dwelling unit or lot indicating the conduct of such home occupation, including, without limitation, advertising signs or displays.
- (E) There is no on-site sale of materials or supplies except incidental retail sales.
- (F) There is no exterior storage of material or equipment used as a part of the home occupation.
- (G) No equipment or process is used in such home occupation that creates any glare, fumes, odors or other objectionable condition detectable to the normal senses at the boundary of the lot if the occupation is conducted in a detached dwelling unit, or outside the dwelling unit if conducted in an attached dwelling unit.
- (H) No traffic is generated by such home occupation in a volume that would create a need for parking greater than that which can be accommodated on the site or which is inconsistent with the normal parking usage of the district.

(2) Cottage Food and Fresh Produce Exception. A home occupation use meeting the requirements of Chapter 6-17 “Cottage Foods and Fresh Produce,” B.R.C. 1981, is exempt from the requirements of subparagraphs (1)(A), (D), (E), (F) and (G) above. Gardens are exempt from subparagraph (C) above. Such use shall be permitted as an allowed use in all zone districts in which a home occupation is permitted as a conditional use.

(23) Prohibitions: No person shall engage in a home occupation except in conformance with all of the requirements of paragraph (e)(1) of this section, except as provided in Paragraph (e)(2) of this section.

Option E

Amend proposed new section 6-17-2(b) as follows:

- (b) Cottage food products offered for sale shall be limited to products produced on the same premises from which the sales occur provided, however, a product may include small amounts of ingredients produced off premises, such as sugars and preservatives;



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE Consideration of a Motion to Revise the City of Boulder’s 2015 State and Federal Legislative Agenda

PRESENTERS

Jane S. Brautigam, City Manager
Carl Castillo, Policy Advisor

EXECUTIVE SUMMARY

This agenda item is an opportunity for council to receive a verbal update on matters before the 2015 Colorado General Assembly and to discuss the same. Since legislative matters are moving very quickly at this time, council is asked to click [here](#) to review an up-to-date summary of bills that the city is actively supporting and opposing.

This is also an opportunity to update the city’s 2015 State and Federal Legislative Agenda (the “Legislative Agenda”). Proposed revisions are included as **Attachment A**, with changes since council’s last approval reflected through strike-through and double-underline formatting. The proposed changes clarify existing provisions related to climate change, pesticide use and flood disaster recovery needs.

STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to approve revisions to the City of Boulder’s 2015 State and Federal Legislative Agenda as reflected in **Attachment A**.

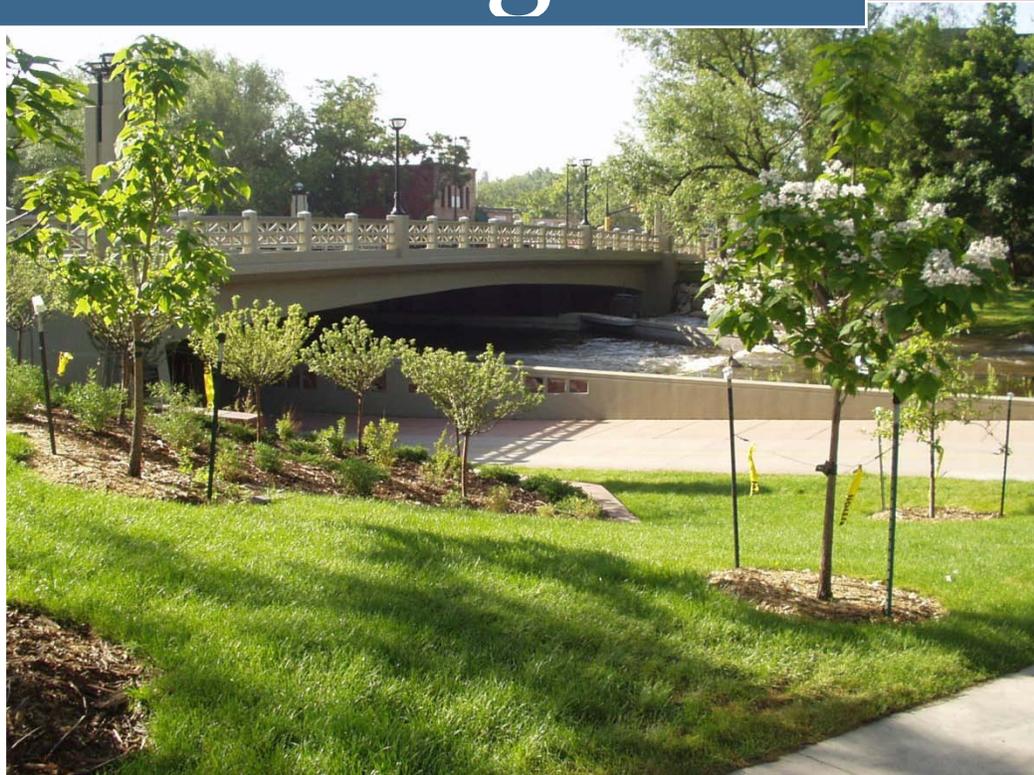
ATTACHMENTS

Attachment A – Proposed Revisions to the City of Boulder’s 2014 State and Federal Legislative Agenda



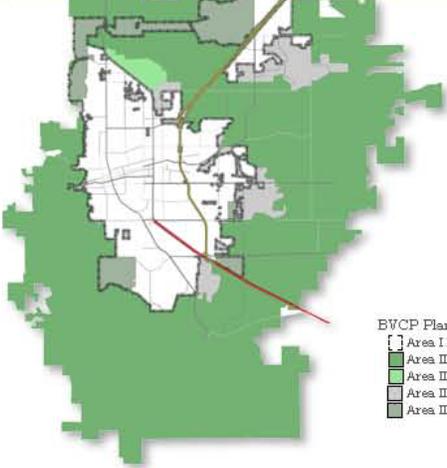
2015

State and Federal Legislative Agenda

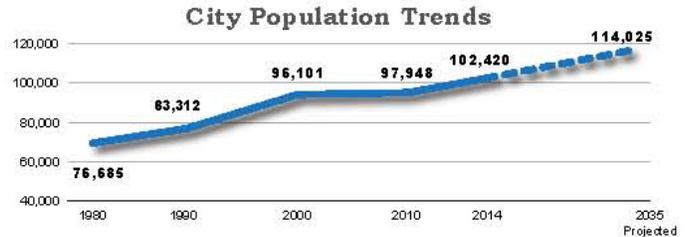


**Approved on
November 6, 2014**

2014 Community Profile

25.8 square miles
70 city Open Space square miles¹
102,420 city population²
 114,200 Service Area Population



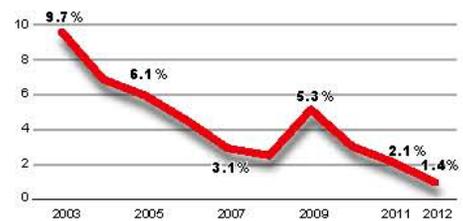
44,028 Housing Units²



Rental vs Owner Occupied Housing Units⁵



Residential Rental Vacancy Rates⁶



Housing Costs & Incomes



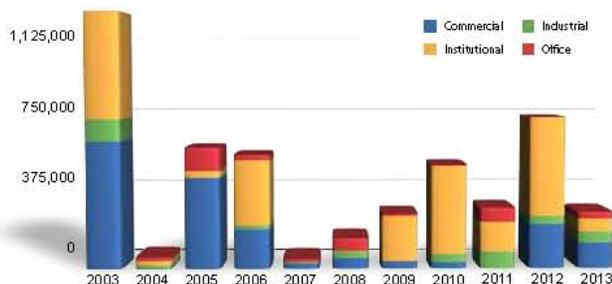
102,500 Jobs⁹
 105,450 Service Area Jobs



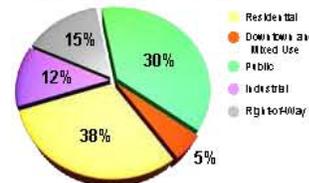
Boulder Commuting Patterns¹⁰



New Non-Residential Square Footage¹¹



Land Area by Zoning¹¹



Vacancy Rate¹²

Retail	4.9%
Office	9.4%
Warehouse	4.8%
R&D/Plex	7.4%

Top 10 Employers (2011)
(listed in alphabetical order)

- Ball Aerospace
- Boulder Community Hospital
- Boulder County
- Boulder Valley School District
- City of Boulder
- Covidien
- IBM
- Micro Motion/Emerson
- UCAR/NCAR
- University of Colorado Boulder

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advisor/state-federal-
legislative-matters

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The city, in collaboration with the other jurisdictions in Boulder County, have been working together to obtain Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds. This program is administered through the State of Colorado, and similar to the FEMA Public Assistance program, the city wants to ensure the state possesses the appropriate resources, and continues to coordinate with local jurisdictions on where the remaining needs are. For example, the State of Colorado’s 1st Substantial Amendment to the Action Plan which directs the funding to various programs identified a nearly equal need between housing and infrastructure needs. A local unmet needs analysis performed by the communities in Boulder County demonstrated that 78% of the remaining need is within the infrastructure category. The city continues to support the sub allocation approach to allocating CDBG-DR funding to allow projects to be sufficiently funded and the local unmet needs analysis to direct all future funding decisions.30

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PURPOSE OF THE LEGISLATIVE AGENDA

The purpose of the city's 2015 State and Federal Legislative Agenda (the "Legislative Agenda") is to formalize city positions on legislation expected to be considered by the Colorado General Assembly and the U.S. Congress. The city offers the Legislative Agenda as a guideline to legislators for reference when considering legislation impacting the City of Boulder. Strategic, targeted, and/or abbreviated versions of the information contained in this agenda will also be created throughout the year for use in further legislative communications.

The Legislative Agenda was developed in advance of the convening of the 2015 Colorado General Assembly and the 114th U.S. Congress. Consequently, it does not address legislation by bill number. Instead, it describes the underlying interest the city has on specific issues. With the coordination of the city's Policy Advisor, it will be used by individual council members and city staff to inform city positions taken on specific bills once these legislative sessions begin. At that point, council may also consider amendments to the Legislative Agenda and address specific bills that have been proposed.

The city often attempts to influence state and federal policies through other avenues, beyond the legislative agenda, such as by submitting comments on administrative rulemakings or "sunset" reviews of expiring legislation, or by making direct appeals to federal and state administrative officials. While the Legislative Agenda is not designed to direct such action, it can be looked toward as a resource to inform such city efforts.

Council may revisit the Legislative Agenda at any point. It may do so as a body, or through its Legislative Committee. Council created this committee for the purpose of convening on an ad hoc basis with the Policy Advisor and other city staff as necessary when one or more of the following circumstances exist:

1. There is an immediate need for council members to participate with staff in developing a legislative strategy to advance or defeat a bill which is clearly addressed by the city's legislative agenda or other council-approved policy documents, or;
2. There is action expected on pending legislation that affects a matter which council has previously provided general direction on and that could significantly impact the city, but which council did not provide sufficient specific direction on (either through its legislative agenda or other approved policy documents) and with timing that will not allow for council direction to be obtained. In these limited situations, the Policy Advisor may turn to the committee for direction on such legislation so that the city can advocate accordingly. Council is to be informed whenever such committee direction has been provided, and may choose to subsequently revisit such direction.

Council's Legislative Committee is also turned to during non-legislative periods to provide suggestions on revisions to the legislative agenda and to plan agendas for meetings with legislators.

As has been done in years past, council is again adopting a goal that modifications to this legislative agenda require consistency, when applicable, with the six criteria described below:

1. Uniformity with current city council goals;
2. Expected relevance in the upcoming or present state and federal legislative sessions;
3. Uniqueness of issue or impact to the City of Boulder;
4. Viability, or likelihood of achieving goal;
5. Opportunity for providing funding for City of Boulder; and,
6. High probability of metrics of success in order to allow the position to be deleted from future agendas if achieved.

Departures from these criteria are made in unique circumstances as determined by council, such as when adoption of a city position is important to support its regional partners, even while the legislation is otherwise of limited consequence to the city.

The city welcomes the opportunity to discuss the city's Legislative Agenda. Please direct any questions to City Council members or to the city's Policy Advisor at 303-441-3009.

STATE LEGISLATIVE PRIORITIES AT A GLANCE

1. Enhance the ability of local governments to develop and implement effective **energy strategies** that reduce environmental impacts, provide stable rates and promote economic vitality and, protect the authorities of cities to form municipal utilities. Page 10 describes a variety of specific legislative concepts that the city would support in this regard.
2. Encourage more widespread **adoption of electric and efficient motorized vehicles** through various means, including incentives to purchase such vehicles and a development of a network of fast-charging stations, as more fully described on page 13.
3. Increase the state's minimum wage to \$10.10 by 2016. The city's reasoning for this position is described on page 24.
4. Preserve the authority of local governments to use **red light cameras or photo radar enforcement**. Page 34 describes how these tools are used by the city and their importance to the public's safety.
5. Protect against significant **threats to the city's water rights**, especially those allowing for out-of-priority, un-augmented well use in the South Platte basin. Page 40 describes the negative impact to the city of permitting such use.

FEDERAL LEGISLATIVE PRIORITIES AT A GLANCE

1. Seek federal support for Boulder's federally funded labs and the University of Colorado Boulder. As described further on pages 19 and 39, these institutions are foundational to the economic and cultural well being of the city.
2. Support legislation necessary to seek state and federal assistance for flood disaster recovery needs and expenses described further on page 30.
3. Continue to brief federal officials on the city's municipalization efforts and seek support as necessary, while positioning Boulder as a national pilot for the new energy utility, as explained further on page 10 of the agenda.

CLIMATE CHANGE AND COMMUNITY RESILIENCE

- **PRESERVE AND SUPPORT THE ABILITY OF LOCAL GOVERNMENTS TO ENGAGE IN CLIMATE ACTION EFFORTS**

Preserve and support the ability of local governments to develop and implement effective energy strategies that reduce environmental impacts by:

- Forming their own energy utilities;
- Enhancing the right of local governments to condemn electric assets at fair market value while opposing utility efforts to seek lost revenues
- Securing access to information from regulated utilities of designated undergrounding funds and communitywide energy information relevant to climate action programs;
- Facilitating local government purchases of street lighting; and,
- Funding local government energy efficiency and renewable energy programs.

- **FACILITATE ACCESS TO RENEWABLE ENERGY**

Facilitate access to renewable energy by:

- Allowing for aggregation of residential or commercial electric customers in municipal purchase of renewable energy on behalf of these groups of customers (a.k.a. community choice aggregation);
- Reinstating the federal production tax credit for wind energy which was allowed to expire at the end of 2013;
- Allowing mobile home owners to receive the same rebates and incentives for installation of solar panels as are available to other homeowners;
- Establishing a small state level carbon tax with proceeds used to fund renewable energy projects as well as transmission and distribution system improvements that enable additional deployment of renewables and energy efficiency measures;
- Supporting federal policies that establish a price on carbon emissions domestically as well as internationally;
- Removing the 120 percent cap on net metered generation; and,
- Allowing customer access to diverse solar options through a variety of well-designed and equitable policies (including net metering, feed-in tariffs, “value of solar” tariffs, or minimum bills) that fully recognize the value of local solar.

- **EXPAND THE DEVELOPMENT OF CLIMATE CHANGE ADAPTATION STRATEGIES**

The city understands that the early impacts of climate change have already appeared and that scientists believe further impacts are inevitable, regardless of decreases to future global greenhouse gas emissions. In addition, the city recognizes that decisions we make today about land use, infrastructure, health, water management, agriculture, biodiversity and housing will have lasting consequences. It is therefore important to begin planning now for the impacts of climate change in the future. Consequently, the city supports legislation that expands the development of climate change adaptation strategies such as those that initiate, foster, and enhance existing efforts to improve economic and social well-being, public safety and security, public health, environmental justice, species and habitat protection, and ecological function.

- **ENHANCE CUSTOMER ENERGY CHOICE**

Enhance the energy choices available to customers by:

- Making any necessary changes to the community solar gardens law (HB10-1342) to allow for its successful implementation, especially with regard to facilitating formation of smaller (500 kW and under) solar gardens, and enabling local ownership of wind and solar gardens above and beyond ERP requirements and without incentives, if a community chooses;
- Enacting time-of-day electricity price signals that would, among other things, promote charging of vehicles at night;
- Requiring statewide lighting, appliance and other equipment efficiency standards and/or incentives, as appropriate, for efficient technologies;
- Facilitating peer-to-peer customer sharing of electricity generation through strategies like enhanced virtual net metering or microgrid development; and,
- Allowing local governments to develop regional energy networks that implement energy efficiency programs with direct funding from utilities; and,
- Precluding utilities from imposing excessive charges onto their customers for net metering of distributed renewable energy generation, customer-sited combined heat and power systems, or on-site energy recapture systems.

- **INCREASE PUBLIC ACCESS TO ENERGY DATA**

Increase the public's access to energy data by:

- Standardizing regulated utility filings to increase transparency at the PUC and requiring all PUC discovery to be publicly available and filed in machine-readable formats;
- Promoting best practices related to energy data, such as adoption of the Green Button Program by regulated utilities;

- Facilitating the development of a third-party ~~energy data center and/or~~ demand-side management program implementer;
- Facilitating the development of an energy data center or energy statistics branch within a state energy agency to produce data sets related to research and policymaking;
- Enabling regulated utilities to provide aggregated whole-building data to building owners and property managers for use in building benchmarking and energy efficiency improvements; and,
- Creating an exception to the Colorado Open Records Act that confirms the ability of local governments to protect customers' energy data when they participate in local energy efficiency programs.

- **SUPPORT ENERGY UTILITY AND REGULATORY ENHANCEMENTS**

Support energy utility and regulatory enhancements by:

- Requiring utilities to file grid modernization plans with commitments to distribution grid upgrades that facilitate energy efficiency and renewable energy;
- Changing the Public Utilities Commission regulations to encourage investments in conservation by replacing the current focus on minimization of energy rates to one focusing on minimization of the consumer's total energy bill;
- Unbundling rates to clearly differentiate fixed and variable energy costs;
- Facilitating the use of investor-owned transmission lines at fair and reasonable prices to convey renewable energy from multiple sources (a.k.a. retail wheeling).
- Encouraging the Public Utilities Commission to consider comprehensive performance-based regulation for utilities, which would compensate them based on providing customer choice and satisfaction, reliability and resilience, and reduced carbon emissions, as opposed to applying traditional cost of service concepts.

The city also supports legislation similar to HB12-1234 that would clarify that, for purposes of the rules governing intervention in administrative hearings before the Colorado Public Utilities Commission (PUC), customers of a business regulated by the PUC qualify as persons who "will be interested in or affected by" the PUC's order.

- **INCREASE ENERGY EFFICIENCY**

- Increase energy efficiency by establishing high performance residential and commercial building codes.
- Allow local governments to develop regional energy networks that implement energy efficiency programs
- Facilitate development of a third-party demand-side management program implementer

- **ENCOURAGE MORE WIDESPREAD ADOPTION OF ELECTRIC AND EFFICIENT MOTORIZED VEHICLES**

Metropolitan Denver and the northern Front Range were classified as a "marginal" ozone nonattainment area by the U.S. Environmental Protection Agency effective July 20, 2012. The city supports legislation that would decrease the amount of air pollutants, including greenhouse gas emissions, resulting from the use of motorized vehicles. While the primary approach will always be to encourage alternative modes of transportation that reduce vehicle miles travelled, the city will also support legislative change that reduce energy use and emissions of air pollutants from vehicles, specifically legislation that:

- Uses existing “Alternative Fuels Colorado Program” state funding to ensure the development of a network of fast-charging stations along the state’s major corridors;
- Modifies current “HOV Exemption Program,” which provides owners of 2,000 low-emission and energy efficient vehicles free access to high-occupancy-toll lanes, to limit the exemption to three years per vehicles and to allocate the new permits to only the owners of the most energy efficient vehicles, which should be updated periodically.
- Modifies existing state tax credit for electric vehicles making them transferable in order to create new financing opportunities (e.g., leases, performance contracting, etc) and to allow public sector agencies to take advantage of those credits;
- ~~Directs utilities to offer electric vehicle tariffs which would allow EV owners to charge their cars at cheaper rates during off-peak times of the day.~~
- Requires the state’s vehicle registration database to be structured to allow local governments to have access to fuel efficiency information of the vehicles registered in their jurisdiction;
- Provides Colorado counties the option to implement a revenue-neutral system that imposes higher vehicle registration fees on the purchase of less efficient vehicles and rebates on the purchase of more efficient vehicles (assuming social equity concerns can be concerned);
- Supports the adoption of the next phase (post-2025) of federal vehicle efficiency standards for light duty vehicles and of the next phase (post 2016) of federal efficiency standards for medium and heavy duty vehicles;
- Requires a percentage of vehicles sold in Colorado to meet “zero emission vehicle standards,” as enacted in California (requires 15% of vehicles sales to be ZEV by 2025) and subsequently adopted by nine other states;
- Increases state biofuel infrastructure and develop a statewide biofuels strategy, and;
- Encourages the proliferation of public charging stations for electric vehicles by requiring new parking lots and parking structures to provide a minimum number of public charging stations.

- **SUPPORT REFORM OF PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCE STATUTES TO ALLOW FOR RESUMPTION OF BOULDER COUNTY'S CLIMATESMART LOAN PROGRAM (CSLP)**

The city has been an active supporter of Boulder County's PACE finance program, the CSLP. Many city residents have taken advantage of the CSLP to secure low-interest loans to make energy efficiency and renewable energy upgrades to their homes. However, actions taken in 2010 by Fannie Mae, Freddie Mac, and the Federal Housing Finance Agency have forced local governments across the country, including Boulder County, to suspend their PACE financing programs. The city supports reversal or resolution of these federal actions, either through legislation or regulation, to allow PACE programs to again move forward. If such federal action is taken, the city would also urge the Colorado General Assembly to quickly take any action necessary to conform Colorado's PACE enabling statutes with the new federal requirements.

- **PROMOTE WASTE REDUCTION AND DIVERSION EFFORTS**

In Colorado, there are currently no statewide minimum waste diversion goals. In addition, there exist artificially inexpensive landfill tip fees and no minimum recycled content standards. This often makes the most environmentally responsible management practices like source reduction and recycling and composting cost prohibitive. The city supports statewide legislation that would:

- Encourage product stewardship and take-back programs (a.k.a. "extended producer responsibility");
- Ban specific materials;
- Require post-consumer minimum content standards for product manufacture;
- Implement statewide or regional landfill tip fee surcharges to be used for waste reduction;
- Create tax credits to encourage source reduction, recycling and composting, and markets for recycled materials, and;
- Establish a statewide waste diversion goal structured to include incentives and assistance programs to spur waste diversion state-wide, and encourage additional resource recovery.

While the city opposes "waste to energy" technologies involving trash incineration or incentivizing landfilling for the sake of energy creation, the city supports energy capture from anaerobic digestive technologies at composting and wastewater treatment plants. The city also supports energy production from the organic matter portions of the waste stream that would otherwise end up in a landfill if not used to make energy or energy products. Examples of this type of beneficial use include woody construction and demolition waste and yard waste that is not able to be otherwise diverted from landfilling and can be used to produce electricity or liquid fuel components. The city, however, views all energy production

uses as last in priority to other beneficial uses such as composting, recycling, and re-purposing.

The city also has specific concerns about the environmental hazards posed by electronic waste in landfills. Therefore, the city supports legislation that requires extended producer responsibility that is regulated to be environmentally and socially acceptable. Finally, the city would support repeal of the prohibition contained in state law (C.R.S. Section 25-17-104) on local government bans on “use or sale of specific types of plastic materials or products” or restrictions on “containers . . . for any consumer products.”

- **SUPPORT IMPROVEMENTS TO THE COLORADO OIL AND GAS CONSERVATION COMMISSION’S OVERSIGHT OF OIL AND GAS DRILLING AND PRESERVATION OF LOCAL CONTROL TO ADOPT REGULATIONS, MORATORIUMS OR OTHER LIMITS AS NECESSARY**

Oil and gas drilling is an industrial activity that is increasing in Colorado and within the northern Front Range, and which poses significant risks and potential adverse impacts. These include damage to air and water quality, scenic values, property values, public infrastructure, and public health and that can significantly affect both local quality of life and economic prosperity.

There is growing public concern about the proximity of oil and gas development to communities and other sensitive resources and about industry techniques, such as hydraulic fracturing (or “fracking”), used to access oil and gas resources. Fracking is a process whereby fluids are injected at high pressure into underground rock formations to blast them open and enable new or increased exploitation of fossil fuel resources. Chemicals typically used in the fracking process include diesel fuel, benzene, industrial solvents, and other carcinogens and endocrine disrupters. According to the Colorado Oil and Gas Conservation Commission (COGCC), nearly all of the more than 51,000 oil and gas wells operating in Colorado are fracked.

There is increasing evidence and growing concern that oil and gas operations emit toxic air pollutants, volatile organic compounds that cause ground-level ozone, and potentially large amounts of methane, one of the most potent greenhouse gasses. Further, according to the COGCC, since 2010, there have been more than 1,500 spills in Colorado – an average of 500 each year – and more than 20% of these spills have contaminated water supplies. Accordingly, the city believes that fracking should not be an exempted activity under the Clean Water Act or Safe Drinking Water Act or other federal environmental laws.

In July of 1993 the City of Boulder adopted its own regulations to govern oil and gas operations and production on city open space lands. These regulations require an application to the city manager, and hearings conducted by the Open Space Board of Trustees and City Council. Since the adoption of these regulations in 1993, no one has applied to conduct new drilling operations on Open Space lands. These regulations, however, do not address the

issue of fracking or other emerging concerns about oil and gas impacts, nor do they address any potential drilling that might be proposed within city limits on non-open space lands.

Boulder County and many of the communities surrounding Boulder are facing increased oil and gas drilling activity and are in various stages of adopting moratoria or crafting new rules to address potential risks and adverse impacts from fracking and other drilling activities. The State of Colorado argues that state authority preempts local rules. In addition, the oil and gas industry sued Longmont challenging a ban on fracking within city limits that was adopted by Longmont citizens by a 60% vote. A decision in favor of industry is currently being appealed by Longmont. Furthermore, several multi-year studies are underway—including one by the University of Colorado at Boulder—to analyze air, water and public health impacts of fracking, the results of which will not be out for several years. In response, the Boulder City Council adopted a year-long moratorium in June 2013 on processing any new permits for oil and gas exploration or development within the city limits or on our city open space. The council subsequently placed an initiative on the November ballot to extend this moratorium until June 2018, while waiting for the results of these pending studies and lawsuits; voters passed this ballot initiative (2H) by over 78%.

The City of Boulder believes that local governments have both the right and responsibility to take action to protect the public health and well being of its residents as well as the environment. The city supports the state setting minimum standards and best management practices for the oil and gas industry (such as those suggested by the International Energy Agency on this subject, entitled “Golden Rules for a Golden Age of Gas”), but also believes that local jurisdictions must be allowed to adopt strong rules as needed to address local concerns and conditions. To that end, the city supports legislation that clarifies and strengthens the authority of local governments to use their existing land use authorities to manage and tailor oil and gas activities within their borders to ensure public health, safety and welfare, and to protect the environment. The city also opposes legislation that would preempt local authority to establish bans, temporary moratoriums, or to establish and enforce regulations over such fracking operations.

In addition, the city supports legislation that would address specific oil and gas drilling impacts, including legislation to:

- Better protect homes and communities by increasing the minimum distance between wells and occupied buildings from the current 350’ setback to 1000’, 1,500’ for schools, giving local governments an effective role in controlling the pace and footprint of development in their jurisdictions;
- Lift the current prohibition on local governments passing along the cost of inspections to industry.
- Adopt statewide protections for water including: requiring setbacks from all streams and lakes; requiring baseline and periodic water monitoring at all drilling sites; raising casing and cementing standards to ensure wellbore integrity; and requiring operators to formulate a water management plan and recycle wastewater before acquiring new supplies.

- Better protect air quality at and near oil and gas operations and decrease greenhouse gas emissions by requiring strict controls on fugitive emissions from oil and gas facilities, including adopting the latest technology in leak detection and repair.
 - Address the dual mandate and composition of the COGCC to make its primary role the regulation of the oil and gas industry to protect the public health, safety and the environment.
 - Support further study of air, water and public health impacts oil and gas operations and ways to mitigate or avoid impacts.
- **FEDERAL AND STATE SUPPORT FOR BUILDING COMMUNITY RESILIENCE**

In December 2013, Boulder was selected as one of 32 inaugural cities to participate in 100 Resilient Cities, an exciting new initiative pioneered by the Rockefeller Foundation that is committed to building resilience in diverse communities worldwide. Resilience and adaptation are real challenges Boulder is wrestling with as the community recovers from historic flooding that created severe and lasting impacts. This follows just three years after experiencing (then) Colorado's most financially destructive wildfire in state history. These experiences and a long history of climate mitigation initiatives have taught the city that resilience strategies involve more than managing or recovering from disruptive events. Resilience as the ability to "bounce back" is insufficient. To mobilize the resources and community support necessary to significantly increase our social, economic and ecological resilience, we must formulate a compelling vision of the future towards which our efforts allow us to "bounce forward".

Over the next two years, we will be working to develop a resilience strategy that will build on past successes and look to new integrated planning to ensure a thriving future for our community. With Rockefeller Foundation support, the city has hired its first Chief Resilience Officer to lead the coordination and development of broad reaching resilience strategy.

In order for Boulder and other communities around the nation to implement these strategies, they will require coordination and financial and technical support from the state and federal governments. The city will support legislation that furthers such goals.

DEMOCRACY AND GOVERNANCE

- **SUPPORT FOR AN AMENDMENT TO THE U.S. CONSTITUTION ABOLISHING CORPORATE PERSONHOOD**

On November 1, 2011, the residents of Boulder voted, by a 73 percent majority, to approve Ballot Question No. 2H which called for "reclaiming democracy from the corrupting effects of corporate influence by amending the United States Constitution to establish that: 1) Only human beings, not corporations, are entitled to constitutional rights; and 2) Money is not

speech, and therefore regulating political contributions and spending is not equivalent to limiting political speech.”

The City of Boulder will support state and federal legislation similar to SJR12-1034, or action by other intergovernmental partners, that furthers efforts to amend the U.S. Constitution with language that captures the sentiment, if not the exact language, expressed by Ballot Question No. 2H. This includes support for the joint resolution that was introduced in the U.S. Senate on December 8, 2011 by Senator Bernie Sanders to amend the Constitution to exclude corporations from First Amendment rights to spend money on Political Campaigns (a.k.a. the Saving American Democracy Amendment).

- **SUPPORT GENERAL ASSEMBLY ACTION TO SUBMIT TO THE COLORADO ELECTORATE A REFERRED MEASURE TO REFORM THE CURRENT PROCESS FOR CITIZEN-INITIATED CONSTITUTIONAL AND STATUTORY AMENDMENTS BY ALTERING THE SIGNATURE COLLECTION REQUIREMENTS AND REQUIRING A SUPERMAJORITY VOTER APPROVAL FOR CONSTITUTIONAL AMENDMENTS, EXCEPT FOR THOSE MEASURES THAT LOOK TO AMEND PREVIOUS VOTER-APPROVED CONSTITUTIONAL AMENDMENTS; AND REQUIRING FOR A TIME A SUPERMAJORITY APPROVAL BY THE GENERAL ASSEMBLY TO CHANGE CITIZEN-INITIATED STATUTORY AMENDMENTS**

Over the past 25 years, as a result of its low threshold requirements, Colorado has experienced a surge in citizen-initiated ballot measures. In the last 18 years alone, the constitution has been amended 35 times, adding detailed and sometimes conflicting provisions with far-reaching consequences. The city supports state legislation similar to HCR12-1003 that would reform the citizen initiative process to make it more difficult to amend the state constitution while providing assurance to Colorado citizens that statutory amendments will be respected by state elected officials.

ECONOMIC VITALITY

- **PROTECT CORE PROVISIONS OF THE COLORADO URBAN RENEWAL LAW, WHICH PROVIDE EFFECTIVE REDEVELOPMENT TOOLS FOR MUNICIPALITIES SUCH AS TAX INCREMENT FINANCING AND EMINENT DOMAIN**

Unlike many communities that contain vast areas of undeveloped land planned for future commercial and residential use, Boulder's future economic sustainability will depend on effective and ongoing re-use of existing developed property. The majority of future redevelopment in Boulder will be completed by private entities and through private investment. However, in rare circumstances, and based on the requirements of the urban

renewal law, projects that demonstrate a compelling community need may only be achievable through a public/private urban renewal partnership. Municipalities should retain the capacity to facilitate revitalization of their urbanized areas. The city, however, recognizes that there have been instances of abuse of this tool that threaten its continued availability. Accordingly, the city will support legislation designed to address such abuses, specifically those designed to assure that: the tax increment base is set at a fair level; the impacts of projects in the urban renewal area are adequately communicated to the other impacted taxing districts (e.g., allowing counties to appoint a member to serve on urban renewal authority board), and/or; the increment revenues be distributed to impacted taxing entities following repayment of financial obligations.

- **SUPPORT CONTINUED FUNDING AND SUPPORT FOR THE FEDERALLY FUNDED LABS LOCATED IN BOULDER**

The city's economic vitality policy strongly supports the federally funded laboratories that are located in the city, specifically:

- Cooperative Institute for Research in Environmental Sciences (CIRES)
- Joint Institute for Laboratory Astrophysics (JILA)
- Laboratory for Atmospheric and Space Physics (LASP)
- National Center for Atmospheric Research (NCAR)
- National Ecological Observatory Network (NEON)
- National Institute of Standards and Technology (NIST)
- National Oceanic and Atmospheric Administration (NOAA)
 - Earth System Research Laboratory (ESRL)
 - National Geophysical Data Center (DGDC)
 - National Weather Service (NWS)
 - National Environmental Satellite, Data and Information Service (NESDIS)
 - Space Weather Prediction Center (SWPC)
- National Telecommunications and Information Administration (NTIA)
- University Corporation for Atmospheric Research (UCAR)
- UNAVCO
- United States Geological Survey (USGS)

The labs, the research they conduct, and the researchers and staff they employ are vitally important to the City of Boulder, Boulder County, the Denver metropolitan region, the state, and the nation as a whole. The research funding they receive is redistributed throughout Colorado and beyond in the form of discretionary employee income, purchases of goods and services from suppliers, and contractual agreements with universities and private industry. Technologies they've created have led to technology transfer and spin-off companies.

In the Boulder metro area alone, federal research labs employed over 3,539 people in 2012. The NOAA, NIST and NTIA labs accounted for over one-third of this employment. These are high-skilled, highly educated employees whose average annual compensation in 2012 was \$107,900. In August 2013, CU's Leeds School of Business released a study entitled, "CO-

LABS Economic Impact Study: Economic and Fiscal Impacts of Federally Funded Research Facilities”. According to the report, the net economic benefit to Boulder County of the federal labs, combined with other federally funded research laboratories in Colorado, totaled \$743.2 million in FY 2012.

Boulder highly values the scientific contributions the labs and their employees have made to the entire nation, as well as the economic impact they have on our community. These institutions work closely with scientific researchers from the University of Colorado in Boulder and Colorado State University in nearby Ft. Collins. This synergy of scientific knowledge is found nowhere else in the United States.

Just as the labs generate direct benefits (employment, local spending) and associated indirect activity through an economic multiplier effect, the opposite holds true for funding reductions. According to CU’s Leeds School of Business, for every job lost at these federal laboratories, an additional 1.17 jobs will be lost in Colorado. For every \$1 million in funding cuts to the labs, an additional \$1.13 million in economic impact will be lost. Perhaps even more troubling, our national capacity for research and innovation will be damaged by lay-offs of scientists and researchers, jeopardizing new advanced technologies, future businesses formed to commercialize developing technologies, and our global competitiveness.

- **SUPPORT FACILITATING THE ABILITY OF MUNICIPALITIES TO ENTER INTO REVENUE SHARING AGREEMENTS**

The city believes that there are a number of shortcomings associated with the current reliance municipalities have on sales tax generation. These include revenue-driven development detached from community land use goals, the use of incentives to capture development at the expense of municipal budgets, and sales tax revenue volatility resulting from counterproductive competition of regional retail outlets. In order to address these and other limitations, the City of Boulder, in conjunction with the Boulder County Consortium of Cities, is exploring the possibility of a revenue sharing agreement with one or more of its municipal neighbors. The significant challenge of such an undertaking would be diminished if the state were to provide mechanisms to encourage such agreements. One possibility would be for the state to establish a task force to evaluate the possibility of exploring revenue sharing as it may relate to the creation of a service tax or the removal of barriers to collecting Internet sales tax.

HOUSING

- **OPPOSE FEDERAL EFFORTS TO REDUCE APPROPRIATIONS FOR HUD PUBLIC HOUSING AND SECTION 8 PROGRAMS WHICH PROVIDE RENTAL ASSISTANCE TO LOW-INCOME HOUSEHOLDS**

In the continuum of housing options for Boulder citizens, public housing and Section 8 vouchers provide a unique source of safe and affordable homes for approximately 1,000 families. Public housing and voucher assistance serve the most low income families in Boulder, 95 percent of whom have incomes below \$14,000 annually and pay an average of less than \$300 per month in rent. There are very few, if any, market options for these families who depend entirely on the availability of federal assistance in order to live with dignity and assurance of shelter.

- **OPPOSE FEDERAL REDUCTIONS TO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND HOME INVESTMENT PARTNERSHIPS**

Boulder has participated in the CDBG program since 1975, and funds have been used in the past for a variety of projects ranging from assistance to nonprofit agencies that provide services to the city's low and moderate income residents, to construction of the Pearl Street Mall, and renovation of the Chautauqua Auditorium. Boulder has also participated in the HOME program since 1992 and program funds have supported the production and preservation of affordable housing. For the past eight years Boulder has been the lead agency for a regional HOME Consortium including all of Boulder and Broomfield Counties. Half of the HOME funds received by Boulder are used in Boulder and half in the other Consortium communities. In 2014, the city received \$720,822 in CDBG funding, a 37% decrease over 10 years, and \$940,084 in HOME funding, a 31% decrease in five years, from the U.S. Department of Housing and Urban Development. The CDBG and HOME programs allow the city to strengthen public infrastructure, increase supply of affordable housing, and improve the quality of life for the city's low and moderate income residents.

- **SUPPORT FOR STATE HOUSING TRUST FUND**

The city is supportive of legislative efforts that would lead to creation and financing of a state affordable housing trust fund.

- **SUPPORT LEGISLATION THAT HELPS ADDRESS THE POWER IMBALANCE BETWEEN OWNERS OF MOBILE HOMES AND OWNERS OF MOBILE HOME PARKS**

It is the policy of the city to encourage affordable housing ownership, including manufactured housing. Current market conditions place owners of manufactured housing at a disadvantage compared to other potential investors in the purchase of manufactured home communities. These dynamics often lead to the exclusion of the potential buyers who have the most at stake and the greatest need for an opportunity to purchase the park.

- **OPPOSE FURTHER CUTS TO STATE FUNDED HEALTH AND HUMAN SERVICE PROGRAMS, ESPECIALLY THOSE THAT ARE PREVENTIVE IN NATURE**

In recent years the state made drastic cuts to services that help provide a safety net to thousands of city residents. This includes services to very low income residents, children and families, mentally ill, disabled and people without health insurance. The city urges the General Assembly to avoid making further cuts to those essential services that serve the city's most vulnerable, especially intervention and prevention services that keep people out of crisis.

HUMAN SERVICES/HUMAN RIGHTS

- **SUPPORT COMPREHENSIVE FEDERAL IMMIGRATION REFORM**

The City of Boulder has been, and remains, committed to the protection of civil and human rights for all people. It believes in the dignity of all Boulder residents, regardless of immigration status, and recognizes the importance of their many contributions to the social, religious, cultural and economic life of the city.

The failures of the U.S. immigration system have had profound impacts within the Boulder community. These include very young students losing motivation to excel in their learning because of knowledge that they lack affordable higher educational opportunities and the existence of an underclass, climate of fear, informal economy and work force inequities.

Accordingly, the city welcomes and encourages cooperation at all levels of government to work together to support swift and responsible legislative action to produce equitable, humane, effective and comprehensive federal immigration reform that provides for:

1. Enforceable immigration laws;
2. A rational and humane approach to the undocumented population;
3. A simplified visa system which allows for family unification of those who have been separated by the legal immigration backlog process and which provides for legal status for the existing immigrant workforce;
4. A rate and system of controlled immigration that matches the needs of our economy;
5. Social integration for our existing immigrant workforce and their families;

6. Recognizing employers as key allies in implementing immigration policy and enhancing enforcement of labor laws to remove the market advantage that leads to exploiting immigration status to pay lower wages, avoid taxes and violate labor laws;
7. A system which ultimately aids in border control, and;
8. Bilateral partnerships with other countries to promote economic development that will reduce the flow of immigrants.

The city also supports federal legislation, such as the often introduced Development, Relief, and Education for Alien Minors Act (The “DREAM Act”), that would qualify students for immigration relief if they have resided in the United States for several consecutive years, arrived in the U.S. as young children and demonstrated good moral character; put such students on a pathway to citizenship if they graduate from high school or obtain a GED and complete at least 2 years towards a 4-year degree or serve in the U.S. military for at least two years, and; eliminate a federal provision that discourages states from providing in-state tuition to their undocumented immigrant student residents, thus restoring full authority to the states to determine state college and university fees. Similarly, the city supports legislation, like HB14-1124, which would allow instate tuition for American Indian Tribe members with ties to Colorado.

Finally, the city supports legislation like the Uniting American Families Act of 2013 (S.296), which would ensure that all Americans, regardless of sexual orientation, receive equal treatment under immigration laws. The 2013 bill specifically would have allowed partners and children of U.S. citizens and lawful permanent residents to obtain lawful permanent resident status the same way heterosexual spouses can. It would also allow for family-based immigration for gay and lesbian Americans and the reunification of families, which strengthens our communities.

- **PROTECT UNACCOMPANIED CHILDREN IMMIGRATING INTO THE UNITED STATES**

In 2014, an unprecedented number of unaccompanied minors fled their home countries in Central America to seek refuge in the United States, creating a humanitarian crisis and requiring immediate action by the Administration and Congress of the United States. Many of the U.S. laws and procedures regarding unaccompanied minors are focused on the welfare of the child, rather than detention, and the United States Department of Health and Human Services (HHS) must place the children in the “least restrictive setting” possible. Boulder City Council urges the President and Congress of the United States to adopt immigration policies that ensure that unaccompanied minors receive appropriate child welfare services, legal support and expeditious reunification with their families already in the United States.

- **FURTHER THE RIGHTS OF ALL PEOPLE REGARDLESS OF THEIR ACTUAL OR PERCEIVED SEXUAL ORIENTATION OR GENDER VARIANCE STATUS**

On May 18, 2004, Boulder's City Council adopted Resolution No. 947. This resolution affirms the city's commitment to the protection of civil rights for all people as outlined in the city's human rights ordinance. Furthermore, the resolution recognized the many contributions that the city's gay, lesbian, bisexual and transgender residents have provided that have enhanced the lives of all in the community. Finally, the resolution declared support for repealing or legislatively challenging the Colorado state law prohibiting the issuance of same sex marriage licenses.

Consistent with the city's long history of support for the equal rights of all people regardless of their actual or perceived sexual orientation or gender variance status, the city will continue to support the right for same-sex couples to enjoy and be bound by the same legal rights and responsibilities as married, opposite-sex couples, including the right to be issued a marriage license and to file joint income tax returns.

The city supports the Employment Non-Discrimination Act (ENDA) of 2013 (S. 815), a federal bill to prohibit employment discrimination on the basis of sexual orientation or gender identity. With no clear federal law prohibiting workplace discrimination on the basis of sexual orientation or gender identity, many lesbian, gay, bisexual, and transgender workers live with uncertainty and fear about whether they'll be able to keep a job and care for their families. Without a comprehensive federal law like ENDA, these workers lack antidiscrimination protections in a majority of states.

- **INCREASE THE MINIMUM WAGE**

In his 2014 State of the Union address, President Obama called on Congress to raise the federal minimum wage from \$7.25 to \$10.10 an hour. Colorado's minimum wage is currently \$8 per hour. The Economic Policy Institute estimates that raising the federal minimum wage to \$10.10 by 2016 would:

- Increase wages for 269,000 working Coloradans who currently make the minimum wage;
- Raise wages for another 141,000 Coloradans who would see their salaries adjusted upward to reflect a new pay scale;
- Elevate all affected Coloradans' total earnings by \$578.1 million each year, contributing to workers' spending power;
- Support 217,000 children in Colorado; and,
- Increase Colorado's GDP by \$366 million and create 1,500 full-time jobs over three years.

Raising the minimum wage also would reduce Coloradans' reliance on safety nets like Medicaid, the Children's Health Insurance Program and the Supplemental Nutrition Assistance Program (SNAP). In Colorado, raising the minimum wage would decrease SNAP enrollment by more than 42,300 people and save Colorado \$40.7 million. Two-thirds of minimum wage workers are women. Women, minorities, and families with children would be among those to benefit most from a higher minimum wage. Nearly 17,000 Colorado veterans would also see higher wages.

For these reasons, the city supports change at either the state or federal level that would increase the state's minimum wage to \$10.10 by 2016.

INTERNAL ADMINISTRATIVE MATTERS

- **PROTECT WORKERS' COMPENSATION SYSTEM**

The city's self-insurance program is a cost efficient method to provide workers' compensation. The workers' compensation system serves a dual purpose, providing benefits promptly to injured employees in a cost-effective manner and minimizing costly litigation. Consequently, the city will support legislation that improves the administrative efficiency of the State of Colorado's Division of Workers' Compensation.

State intervention or taxation can negatively impact the city. Consequently, the city will oppose legislation that increases insurance premium costs to employers, adds administrative burdens or taxes to self-insurance programs, promotes litigation, or removes existing off-sets to workers' compensation benefits.

The city also opposes efforts to expand "presumptive disease" claims associated with workers' compensation insurance. Presumptive disease claims are a change in the philosophy guiding workers' compensation insurance. They presume an existing or previous employee obtained the disease from work associated with that person's employer unless the employer can prove otherwise. The 2007 legislative session enacted legislation that requires that, under the Workers' Compensation Act of Colorado, if a firefighter contracts cancer of the brain, skin, digestive system, hematological system or genitourinary system, the condition be deemed to have occurred within the scope of employment unless the employer can prove that the covered cancer did not occur within the scope of employment. This is a particularly difficult proposition for employers as many diseases have a genetic component and cannot be definitively detected in baseline (time of hiring or imposition of new law) testing. The result of this legislation was a 15 percent increase in premiums associated with fire employees. The city opposes any effort to further shift the burden of proof for workers' compensation claims.

- **PROTECT GOVERNMENTAL IMMUNITY**

The complexity and diversity of city operations and services required to meet the needs of the residents of Boulder may expose the city and its officers and employees to liability for

damage and injury. City officers and employees must be confident that they have the city's support in the lawful and proper performance of their assigned duties and responsibilities.

Consequently, the city will support legislation that provides immunity to municipalities and their officers and employees in the lawful and proper performance of their duties and responsibilities and that discourages baseless and frivolous claims against the same. Conversely, the city will oppose legislation that expands or increases municipal liability or further limits municipal immunity beyond current law.

- **OPPOSE CHANGES THAT COULD UNNECESSARILY RESULT IN INCREASED CONTRIBUTIONS OR FORCE A REDUCTION IN BENEFITS FOR MEMBERS OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION (PERA)**

Two significant pieces of legislation were enacted in recent years aimed at putting PERA back on track to being fully funded. The first, SB06-235, passed in 2006, made several changes, including: (1) temporary increases in the amount that employers from each division must contribute to PERA, with increases staying in effect until accounts in those divisions are found to be 100% funded; (2) the addition of an eight percent cap per year on the Highest Average Salary (HAS) for new hires; (3) a change of the Rule of 80 to a Rule of 85 with a minimum retirement age of 55 for new hires; (4) a prescribed amortization period reduced from 40 years to 30 years; (5) a requirement for independent actuarial studies to be conducted before future benefit increases could occur; and, (6) a new requirement to purchase service at full actuarial cost.

Then in 2010, SB10-001 was enacted to require, among other things: (1) additional increases in the temporary employer contributions beyond previous requirements, with exemptions for the local government division where further increases were deemed unnecessary; (2) reductions in the cost of living adjustments (COLA); (3) application of the 3-year HAS with a base year and an eight percent spike cap applicable to current members not eligible to retire on January 1, 2011; (4) extension of the Rule of 85 to existing members with less than five years of service credit as of January 1, 2011, creation of a Rule of 88 for new hires and a Rule of 90 for hires after 2017, and; (5) a new requirement for contributions from retirees who return to work.

Despite this legislation, a result of comprehensive and collaborative efforts by PERA, legislators and representatives of employer groups, and despite a 2012 independent auditor finding that PERA's assumed 8% rate of return is "within a reasonable range of possible scenarios," a variety of legislation has since been and is expected to continue to be introduced in the Colorado General Assembly to further change the PERA system. The city recognizes that further reforms may indeed be required and consequently supports legislation deemed necessary to stabilize PERA's funds, but only when informed by a comprehensive evaluation of the impacts of those changes so as to protect against unnecessary increases to employer or employee contributions or reductions in employee benefits. One reform the city would support without further analysis is changes to the composition of the 16-member PERA

Board of Trustees to provide more balanced representation from non-PERA covered members. However, as one of the largest of the 24 member governments in PERA's Local Government Division, Boulder will oppose piecemeal state legislation that has unknown financial impacts.

LOCAL CONTROL

- **OPPOSE THREATS TO LOCAL CONTROL AND HOME RULE AUTHORITY**

Several bills are introduced each session that threaten to erode local powers. As a general matter, the city believes that local problems need local solutions and that the current authority and powers of municipal governments in areas such as land use, zoning, personnel matters and sales tax, should not be further eroded. Legislation threatening local control, that does not otherwise further interests specified in this legislative agenda or otherwise recognized by City Council, will be opposed by the city.

NATURAL RESOURCES, WILDLIFE AND PARKS

- **PROTECT THE ABILITY OF LOCAL GOVERNMENTS AND THE LAND TRUST COMMUNITY TO ACQUIRE AND PROTECT PARKS AND OPEN SPACE**

Colorado Lottery proceeds have been one of the few sources of state funding for conservation of natural resources, wildlife and parks, providing \$2.3 billion statewide over the past 28 years. Profits from the sale of lottery products are allocated according to the following formula: up to 50 percent to the Great Outdoors Colorado (GOCO) Trust Fund, 40 percent to the Conservation Trust Fund (CTF), and 10 percent to the Colorado Division of Parks and Outdoor Recreation. GOCO provides competitive grants to projects that preserve, protect and enhance Colorado's wildlife, parks, rivers, trails and open space. The fund is capped (approximately \$54 million in 2011) and any spillover is directed to the BEST rural school capital construction assistance fund. The CTF funds are used by local communities across the state for outdoor projects including trail construction, ball fields, playgrounds, and adding new parks or enhancing existing parks.

CTF and GOCO funds have for years been a critical part of the city's capital budget. Important acquisitions have been added to Boulder's inventory of parks and open space that have helped shape our community, preserve ecological systems and create opportunities for active and passive recreation for people of all ages. Among the projects accomplished with GOCO funding include Valmont Bike Park, winner of the 2011 Colorado Parks and Recreation Association award for recreation facility design and future host of the 2014 USA Cyclo-Cross National Championships.

The city supports preservation of the current lottery distribution formula and will oppose legislation that would change that allocation or create new lottery scratch tickets for other purposes that would decrease demand for the existing lottery tickets.

- **SUPPORT STATE LEGISLATION FURTHERING IMPLEMENTATION OF THE CITY'S URBAN WILDLIFE MANAGEMENT PLAN**

The Urban Wildlife Management Plan (UWMP) was developed to provide guidance on how Boulder's urban areas will provide diverse, self-sustaining, native wildlife populations in a manner compatible with basic human needs, social and economic values and long-term ecological sustainability. The plan also seeks to reduce conflicts between humans and wildlife in the urban core. Management of the city's lands outside of the urban core such as Open Space and Mountain Parks lands and utilities lands (Silver Lake Watershed, Boulder Reservoir) are covered by the plans of the appropriate managing department.

Because of the network of nearby natural lands, its geographic setting at the intersection of the mountains and plains, Boulder's urban areas are visited or inhabited by a wide range of wildlife species. Some species keep a low profile, present little or no conflict and go unnoticed by most urban residents. Other species are highly valued by the community, but most of these present little or no conflict with urban services or land uses. There are, however species that are valued by the community that do come into conflict with people. These include prairie dogs, black bear, mountain lions, Canada geese and mule deer. The city is often attempting to simultaneously conserve these species on open space lands, while managing conflict in the urban area.

There are often opportunities on a species-specific level to support legislation at a state or federal level to complement our conservation and conflict management efforts. Examples include support of funding for mosquito management to address state or federal public health issues/mandates; modifications of laws to allow prairie dog relocation to other counties without commissioner approval; and, modifications to in-stream flow legislation that would allow the city to retain the value of its water rights while simultaneously conserving native and sport fisheries.

- **SUPPORT TO ADDRESS THE CITY'S EMERALD ASH BORER INFESTATION**

In late September of 2013, the emerald ash borer (EAB), an invasive pest of ash trees, was identified within the city limits of Boulder. The EAB is a hard to detect, and even more difficult to exterminate, insect that kills even healthy ash trees within 2-4 years of first symptoms. Although the EAB flies, infestation normally results from movement of infested ash trees and wood (e.g., firewood, chips, packing and industrial materials).

The EAB poses a significant threat to the ash trees within the city. There are approximately 38,000 city park and public street rights-of-way trees under the jurisdiction of the Boulder

Parks and Recreation Urban Forestry Division: approximately 6,000 are ash trees (15 percent of the public tree population). That number rises to 98,000 when you include private ash trees within the city and 1.45 million when you take into account all the ash trees in the Denver metro area. Consequently, local governments may require significant support from the state to contain the threat, enforce a quarantine, remove dead trees and to educate the public.

The city will support necessary state legislation, including requests for supplemental funding for the CDA or the creation of an account to support emergency response to pests when no specific agricultural or horticultural industry is primarily impacted, to allow the state to partner with the city in addressing the challenges presented by the EAB.

- **SUPPORT MORE BALANCE IN THE COMPOSITION OF COLORADO'S "PESTICIDE ADVISORY COMMITTEE," ~~AND FOR RESTORATION OF LOCAL GOVERNMENT AUTHORITY TO REGULATE CERTAIN PESTICIDE USES~~ AND FOR PROTECTIONS FOR POLLINATORS**

The Colorado Pesticide Applicators' Act applies to pesticide applicators with the focus primarily on testing and licensing of commercial pesticide applicators. It also incorporates EPA rules and federal pesticide law. Until 2006, when industry-backed legislation was enacted, the Act allowed local governments in Colorado wide discretion to enact pesticide regulations. Since 2006, however, local control to regulate almost all aspects of pesticide use has been preempted by state law. The 2006 legislation expanded state preemption for all pesticide users. The only exception is for the posting of notification of pesticide applications for non-commercial pesticide applicators.

Revisions to the Act can now be expected in 2015, following a sunset review initiated this fall and expected to be concluded with a report and recommendations by the end of 2014. Given the city's vested concerns in regaining some of its former authority to protect human health and the environment from the potential adverse effects of pesticides, city representatives expect to be involved at several steps in the sunset review. During this time, it will advocate for legislation that provides a more balanced perspective on pesticide use that takes into account recent studies concerning the human health and environmental impacts of pesticides that were not known at the time the Act was initially enacted. Specifically, it will support expansion of the state's Pesticide Advisory Committee to include members with technical expertise in human health risk (particularly to children), non-target species impacts including pollinators, water quality impacts, local governments, and others to ensure the public's best interests; state protections for children and pollinators; and, restoration of the ability in specific situations for local governments to regain some authority to restrict pesticide use when immediate risk to human health or the environment cannot be addressed by the federal or state governments to adequately safeguard the public interest in a timely manner.

[Rapid decline of honeybees and other pollinators threatens the U.S. agricultural system and the functioning of general ecosystem services. Urgent regulatory action is needed at all levels](#)

of government. State restoration of local control would allow municipalities to address pollinator-specific concerns. The city also supports measures for pollinator protections at all levels of government, including federal legislation such as the Saving America's Pollinators Act of 2013 (H. R. 2692).

PUBLIC HEALTH AND SAFETY

- **STATE AND FEDERAL ASSISTANCE FOR FLOOD DISASTER RECOVERY NEEDS AND EXPENSES**

September 2013 brought unprecedented rainfall to the region causing significant flooding and extensive damage to many Colorado communities. In Boulder, total damage to city infrastructure and public lands is estimated at \$27.~~36~~ million, and private-property damage is estimated at \$~~3~~200 million. The city was declared a national disaster which created the opportunity for possible reimbursement through the Federal Emergency Management Agency (FEMA), Federal Highway Administration (FHWA) and the State of Colorado. As of September, 2014, the city had spent approximately \$17.~~16~~ million on flood recovery. Estimated reimbursements from FEMA, the State of Colorado and the Federal Highway Administration (FHWA) are currently anticipated to be \$14.5 million. The city continues to pursue grant funding from federal and state agencies for recovery and resilience projects. As the city moves into the administration and project management phase of the FEMA process, it is finding that it is expending significant resources to ensure that projects and related expenses remain eligible. For example, city staff was told by FEMA over the course of a year to follow city procurement processes to keep projects eligible. Recently, the guidance was changed so that the city does need to follow the state's procurement process. This has resulted in significant staff resources to retroactively address procurement issues which diverts from the city's primary objective of rebuilding stronger. The city wants to ensure that the State of Colorado and FEMA region VIII possess the appropriate capacity to provide the technical assistance necessary to ensure an efficient flood recovery process. The city will support efforts to ensure that the state and FEMA receive appropriate resources to support local governments' efforts to rebuild as more resilient communities.

The city, in collaboration with the other jurisdictions in Boulder County, have been working together to obtain Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds. This program is administered through the State of Colorado, and similar to the FEMA Public Assistance program, the city wants to ensure the state possesses the appropriate resources, and continues to coordinate with local jurisdictions on where the remaining needs are. For example, the State of Colorado's 1st Substantial Amendment to the Action Plan which directs the funding to various programs identified a nearly equal need between housing and infrastructure needs. A local unmet needs analysis performed by the communities in Boulder County demonstrated that 78% of the remaining need is within the infrastructure category. The city continues to support the sub allocation approach to allocating CDBG-DR funding to allow projects to be sufficiently funded and the local unmet needs analysis to direct all future funding decisions.

- **SUPPORT FOR SAFE USE AND COMMERCIAL REGULATION OF RECREATIONAL MARIJUANA**

The city will support or oppose legislation, as necessary, in furtherance of the following principles:

1. Maintaining or creating new mechanisms to ensure marijuana is appropriately labeled and regulated so that only adults intentionally choosing to use marijuana are exposed to it, that such users receive a safe product with complete information about the impacts of what they are choosing to ingest, and that these substances are kept away from children.
2. Maintaining a dual licensing system to allow both the state and local governments to issue and enforce licensing of commercial marijuana facilities.
3. Allowing local governments to recover the full costs of any commercial licenses they choose to allow.
4. Maintaining as a matter of state interest and responsibility the creation of overall safety requirements related to recreational marijuana while reserving to local governments specific abilities, but not mandate, to adopt additional requirements and monitor and enforce those rules.

- **SUPPORT REMOVAL OF BARRIERS THAT PREVENT LEGITIMATE MARIJUANA BUSINESSES TO ACCESS BANKING SERVICES**

Legitimate marijuana businesses in Boulder are forced to operate on a cash-only basis because the substance's federal status currently bars banks from doing business with them. This inequity creates a vulnerability to several of the enforcement priorities outlined in the Deputy Attorney General's letter dated August 29, 2013. More importantly it creates a serious local public safety problem. Statutory solutions are at the federal level and there are efforts underway to try and address this, most recently by Rep. Ed Perlmutter. The city will support these efforts to remove legal and administrative barriers that prevent these businesses from accessing banking services.

- **PROMOTE HEALTH AND SAFETY CONCERNS ASSOCIATED WITH ALCOHOL ABUSE IN THE GREATER COMMUNITY**

Boulder's City Council adopted Resolution 960 on October 19, 2004, concerning alcohol abuse within the community. This resolution affirmed the city's commitment to finding solutions to address the critical issues of health, safety and well being stemming from alcohol abuse within the city.

Since this time, Council has expressly stated its support for appropriate legislation that would:

1. Require the sale of kegs containing alcohol to have a tag attached that would permit tracing of the purchaser, and;
2. Require mandatory server training.
3. Repeal the provision contained in C.R.S. Section 27-81-117 preventing municipalities from adopting public drunkenness ordinances; and
4. Permit municipalities to regulate licensees' hours of alcohol service.

The city will support appropriate legislation that furthers these goals. Conversely, the city will oppose any legislation that undermines these goals, including efforts similar to SB12-118 which would eliminate the 25 percent food requirement for Hotel and Restaurant liquor licenses.

- **CLOSE THE FEDERAL GUN SHOW LOOPHOLE**

While criminal background checks are currently required for purchases of guns at gun shows in Colorado, there are states that do not have such laws. In order to ensure that guns are not placed in the hands of criminals, a federal law eliminating the gun show loophole is necessary.

- **OPPOSE EXPANDING THE APPLICATION OF THE “MAKE MY DAY” LAW BEYOND PERSONAL RESIDENCES**
- **OPPOSE LIMITING THE STATE’S ABILITY TO REGULATE CONCEALED WEAPONS OR LOCAL GOVERNMENT’S ABILITY TO RESTRICT POSSESSION OF WEAPONS IN PUBLIC FACILITIES**

H.R.822, the National Right-to-Carry Reciprocity Act of 2011, is pending in Congress. This legislation would require Colorado to honor concealed carry permits granted by other states, even when those permit holders could not meet the standards required by Colorado law. This would strip Colorado of the power to create its own public safety laws and hand that power over to the federal government – and the states with the weakest protections. H.R.822 would also empower gun traffickers and threaten the safety of our police officers. To protect vulnerable people, states have set standards for carrying handguns that include criteria beyond an applicant’s ability to pass a federal background check. For example, many states issue permits to people with alcohol abuse problems, no firearms safety training, or who are under the age of 21. Colorado does not. Colorado also grants limited discretion to law enforcement to approve or deny a permit. Colorado’s standards also keep guns out of the hands of dangerous criminals. H.R.822, however, would permit citizens of states with less strict laws to freely carry concealed weapons in our state. Because of these problems, the city urges its federal delegation to stand up for law enforcement and support Colorado’s right to make its own decisions about how to protect public safety.

Boulder also has concerns with regard to the open carrying of guns. While cities are prevented from restricting permitted holders of concealed weapons, Boulder wants to make sure it maintains the ability to prevent the open carrying of guns in its public facilities. The open carrying of weapons is alarming to many people and can create logistical issues for the police department.

- **OPPOSE MANDATES FOR LOCAL GOVERNMENT ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

The city supports preserving the option for its police officers to enforce federal laws, including federal immigration laws. However, it will vigorously oppose any state or federal legislation that mandates that its police enforce federal immigration laws, especially if they are unfunded mandates or are likely to result in enforcement officers engaging in racial profiling or discrimination based on race, ethnicity or national origin.

- **OPPOSE INFRINGEMENTS ON EMPLOYMENT AND PERSONNEL DECISIONS MADE BY MUNICIPAL POLICE AND FIRE DEPARTMENTS**

Employees of the city's fire and police departments are part of collective bargaining units. As part of those units, they have the right to negotiate the terms of their employment. The city opposes any state or federal law that would mandate municipalities to collectively bargain with public safety employee labor unions over wages, benefits, or working conditions, under one-size-fits-all rules.

- **OPPOSE IMPOSITION OF ONEROUS INFORMATION GATHERING AND REPORTING REQUIREMENTS ON PUBLIC SAFETY, ESPECIALLY WHEN THOSE REQUIREMENTS COME WITH SUBSTANTIAL COSTS THAT ARE NOT SUPPORTED BY ADEQUATE FUNDING**

An example of a reporting requirement that has been imposed on local law enforcement agencies in the past is the state law requiring the arrest of undocumented immigrants to be reported to Immigration and Customs Enforcement.

- **INCREASE THE FINANCIAL THRESHOLD OF PROPERTY DAMAGE THAT TRIGGERS A POLICE INVESTIGATION OF NON-INJURY TRAFFIC ACCIDENTS**

It takes very little damage to a vehicle to reach the current threshold of \$1,000. While the city's police department currently responds to most accidents, increasing the damage threshold will provide greater flexibility and more local control over the use of police resources.

- **OPPOSE LIMITATIONS ON MUNICIPAL AUTHORITY TO OPERATE RED LIGHT OR PHOTO RADAR CAMERAS TO ENFORCE TRAFFIC SAFETY**

Boulder is one of nine cities in Colorado that use photo enforcement to enhance the safety of its streets. The red light locations in Boulder were carefully selected due to a historic rate of higher accidents over other locations. Use of photo enforcement at these red light locations has yielded significant safety benefits and reduced red light running accidents by 68 percent. Moreover, fewer and fewer red light tickets are issued at these locations each year due to increased compliance. Removal of these cameras could result in accident rates and non-compliance returning to pre-enforcement levels.

Quantifying photo speed enforcement success is somewhat more difficult. It is implemented per strict state statute requirements that limit where it can be placed. It enables the city to enforce speed limits in neighborhood locations that do not have a high enough volume of traffic to justify deployment of officers. It is particularly effective in school zones. One conclusion that can be made is that photo speed enforcement has enhanced the safety of neighborhood streets and school zones by reducing speeding.

Between 1999, when Boulder first introduced photo enforcement, and 2013, fines associated with violations of the city's photo enforcement program and red light violations generated \$13,695,940 in revenue at a direct cost to the city of \$13,118,972. When soft costs of overseeing the program are factored in, the costs of running the program essentially run even to the revenue it generates.

The true cost associated with motorists running red lights and speeding through neighborhoods is not captured in the financial information provided above. It is best quantified in the cost to our community associated with the personal injury and property damage from motorists speeding and running red lights. Recent studies have shown that the average red light camera location in the U.S. results in \$38,000 a year in reduced societal costs, not to mention the number of lives and grief saved from fewer right-angle crashes. For Boulder, with our eight (8) red light running cameras, this results in \$304,000 in societal cost saved annually.

For these reasons, the city will oppose any legislation similar to SB14-181 that would

prohibit or otherwise further restrict the rights of local governments to use red light cameras or photo radar enforcement.

ROCKY FLATS

- **SUPPORT FUNDING FOR THE DEPARTMENT OF ENERGY FOR THE OFFICE OF LEGACY MANAGEMENT AND U.S. FISH AND WILDLIFE SERVICE IN ORDER TO MANAGE ROCKY FLATS AS A NATIONAL WILDLIFE REFUGE WITH THE APPROPRIATE SYSTEMS IN PLACE FOR LONG TERM STEWARDSHIP**

In February of 2006, the Rocky Flats Stewardship Council (RFSC) was formed to focus on the post-closure management of Rocky Flats, the former nuclear weapons plant southwest of Boulder. As a member of RFSC, the city is very supportive of the 2001 federal legislation (Rocky Flats National Wildlife Refuge Act of 2001) that designates Rocky Flats as a future national wildlife refuge site as well as the requirement that long-term liability, ownership and management of the site remain with the federal government. The city supports legislation authorizing, funding, or otherwise providing assistance for the Rocky Flats Legacy Stakeholders Organization, or alternative organization, to work on coordinating regional open space and conservation efforts as they relate to Rocky Flats

TAX POLICY

- **SUPPORT THE MARKET FAIRNESS ACT AND OTHER ACTION TO PRESERVE AND EXPAND THE AUTHORITY OF LOCAL GOVERNMENTS TO COLLECT TAXES**

According to research undertaken by Forrester Research for Internet Retailer, national online retail spending climbed to nearly \$200 billion in 2011, up from \$30 billion in 2000, and will grow approximately 10 percent per year to reach \$280 billion and comprise more than seven percent of overall national retail spending by 2015. At the state level, the National Conference of State Legislatures estimates that Colorado will lose \$352 million in 2012 from uncollected sales taxes. The growth in internet retail activity presents a clear challenge to the operating budgets of Colorado's local governments, many of which rely on sales taxes to fund critical municipal services, as well as the state budget. Consequently, the city supports legislation, such as the Marketplace Fairness Act, that provides authority for states and Colorado local governments to collect sales taxes on purchases made over the internet, regardless of whether the vendor has a physical nexus with the state. Appropriate limitations on this authority might include exemptions for small businesses, centralized collection of taxes on non-nexus sales and adoption of a common tax base for non-nexus sales. However, the city will not support changes which would allow the state to collect and remit tax revenues on non-nexus sales based on anything other than each municipality's individual sales tax rate (e.g., the city opposes use of a blended tax rate) or which would dictate the tax

base or assume authority to collect revenues on local nexus sales which the city already has the authority to tax and collect.

TELECOMMUNICATIONS

- **REESTABLISH THE RIGHT OF MUNICIPALITIES TO PROVIDE TELECOMMUNICATION SERVICES SUCH AS LARGE AND COMPLEX CITY-WIDE FIBER AND PREMISE NETWORKS**

The provision of telecommunication access to ensure effective and appropriate access to educational and city resources are seen as a must in today's society. Utilizing current infrastructure and public-private partnerships can create necessary competition to retain low-cost, high-speed access to our residents, regardless of economic status. Senate Bill 05-152 preempted home rule municipalities from providing telecommunication services (with certain limited exceptions) without a vote of the people, even if infrastructure had already been built. Boulder believes that this legislation is overly restrictive in its private sector "non-compete" provisions. Given the very "low and slow" market evolution in providing low-cost and easily accessible internet and other telecommunication services, the city is completely hamstrung in seeking ways of legitimately investing public dollars in infrastructure and services to resolve the digital divide and general access issues in our communities.

TRANSPORTATION

- **INCREASE TRANSPORTATION FUNDING AND PRIORITIZE ITS EXPENDITURE ON PROJECTS THAT MAINTAIN EXISTING INFRASTRUCTURE, ARE MULTIMODAL IN DESIGN AND THAT OTHERWISE PROMOTE SMART GROWTH**

The city and the entire Denver metropolitan area are in need of new funding to maintain existing infrastructure and transit services, for multi-modal transportation improvements related to roadway, bicycle, pedestrian, carpool/vanpool and for travel demand management activities that would increase the efficiency of the existing system. There is a critical need for federal and state funds to ensure completion of the US 36 BRT project, including funding to acquire the best vehicles and BRT amenities possible and first and final mile connections to that corridor. Funding is also necessary for implementation of the recommendations of the Northwest Area Mobility Study (NAMS); specifically North I25 bi-directional HOV/Transit lanes and development of an arterial BRT system along SH119, US287, 120th Ave, South Boulder Road, Arapahoe/SH7, and SH 42.

The city supports turning to funding sources that are tied to transportation use, including vehicle registration, car rentals, gasoline consumption, or vehicle miles traveled, provided that a significant portion of the funding generated is directed toward specific, identified

projects, including US Highway 36 and arterial BRT, or to programs that fund alternative modes of transportation.

This city also supports the recent trend of turning to managed lanes as a practical solution for improving mobility by providing viable travel options in congested corridors. In fact, the city believes that any significant new lane capacity built with state funds be required to be managed. Managed lanes should result in regulation of demand to ensure choices for the traveler beyond the single occupancy vehicle by providing for the option of travel by bus and free or discounted access to high occupancy vehicles (“HOVs”), as well as allowing pricing to help manage corridor performance, such as dynamic, variable-priced tolls linked to congestion. Public-private partnerships (PPPs) are often essential to identifying funding to construct managed lanes. The challenge, however, is that the partnerships can sometimes focus too much on revenue generation and insufficiently on transportation performance. Moreover, decisions can be made by the state that do not receive sufficient vetting and/or oversight from the affected local governments. In order to ensure that only appropriate toll projects are built, the city would support legislation to require all PPPs for managed lanes to undergo a transparent approval process and to demonstrate maximization in the transportation of people (not just vehicles); reinvestment of at least a portion of toll operating revenues into the corridor for continued improvements; and prioritization of travel choices with a portion of toll revenues supporting transit and/or travel demand management, in order to maximize the value of the transportation investment and to ensure that lower-income residents benefit from the public investment in a toll road. The city also support legislation mandating a determination by the appropriate Metropolitan Planning Organizations (MPOs) that all toll projects, including those which do not use state or federal funding, be analyzed for consistency with the development policies of the MPO’s plan, and that the MPOs assess implications of such projects on the region’s fiscal health, air and water quality, energy, climate change and long-term sustainability. Finally, the city would support legislation similar to HB12-1171 that would prohibit the use of so called “non compete” clauses which are sometimes included in PPPs to preclude maintenance of, or improvements to, existing roads (e.g., Highway 93) in order to increase travel demand on new tolled lanes.

The city believes that new or existing funding should be used for regional priorities as determined by the area MPO, or, where no MPO exists, by the local Transportation Planning Region (TPR) where the improvements are supported by the affected local governments. The city also believes that state legislation should require MPOs and TPRs to model projects for their expected contribution to greenhouse gases and vehicle miles traveled and to prioritize those projects that reduce both.

With regard to federal transportation funding, MAP-21, the latest federal transportation authorization bill, made continued funding for the federal government’s Safe Routes to School (SRTS) program beyond the 2013-14 fiscal year very unlikely. The SRTS program has proven itself a successful and popular program in Colorado. It has provided CDOT with approximately \$2.5 million/year allowing capital and programmatic funding to flow to more than 500 schools across Colorado to improve safe access to schools, ranging from small towns like Ridgeway and Brush, to our largest cities like Denver and Colorado Springs. As a result,

the number of children walking and biking to school has increased by as much as 31 percent. SRTS helps make kids safer, improves congestion near schools, and gives students opportunities to become more comfortable with travel options at an early age. The 2014 Safe Routes to School Act (HB14-3012) directed \$700,000 in general fund revenue to allow part of the programmatic functions to continue for the 2014-2015 fiscal year. The city would support legislation in 2015 that would provide funds to continue this program, helping ensure safe transportation for our most vulnerable population; our children.

- **REALIGN THE COLORADO TRANSPORTATION COMMISSION TO INCLUDE POPULATION, NOT JUST GEOGRAPHY, TO ENSURE FAIR REPRESENTATION OF THE METROPOLITAN AREA**
- **PROMOTE “COMPLETE STREETS,” ACCOMMODATING ALL MODES OF TRAVEL**

The city supports legislation that furthers the concept of “Complete Streets” where modes are interconnected and a complete set of options are made available to improve efficiency and mobility for all. The city also supports legislation that promotes sustainable transportation solutions recognizing energy sources, impacts of vehicle miles traveled, connections to land use, urban design, and increased accessibility for all.

- **OPPOSE LIMITATIONS ON THE CITY’S ABILITY TO REGULATE VEHICLE USE ON SIDEWALKS, MULTI-USE PATHWAYS, AND BIKE LANES, OR THAT REQUIRES THE CITY TO ALTER ITS CURRENT CODE IN ORDER TO MAINTAIN CURRENT POLICY ON ALLOWED USES OF THOSE FACILITIES**

The city’s current ordinances prohibit the use of Segways or motorized “toy vehicles” such as scooters, electric skateboards or mini bikes on sidewalks, multi-use paths or bike lanes. City-initiated changes to such policies would best be informed by a public process where input from the various sidewalk, multi-use path, and trail users could be solicited and evaluated. The city opposes changes to state law that would require the city to change its policy or force an unnecessary and potentially controversial re-evaluation of its policy.

- **OPPOSE TRANSFERING THE MAINTENANCE RESPONSIBILITIES FOR REGIONAL HIGHWAYS FROM THE COLORADO DEPARTMENT OF TRANSPORTATION TO LOCAL GOVERNMENTS**

In past years, the Colorado General Assembly has been asked to consider legislation that would lead to the unilateral transfer to local governments of state highways. Boulder has

several state highways that would be subject to such “devolution,” including U.S. 36 and Highways 93, 7 and 119. The city believes that these types of regional highways, which service multiple communities and counties, need to remain the responsibility of the state government.

- **SUPPORT FLEXIBLE SOLUTIONS AND NEW FUNDING OPPORTUNITIES TO ADDRESS IMPACTS OF TRAIN HORN NOISE AND SUPPORT CREATION OF QUIET ZONES**

The city intends to participate in the upcoming Federal Railroad Administration (FRA) rule making process anticipated to open in late 2014/early 2015 to modify the train horn rules and requirements to create quiet zones. Whether through that process or through legislative means, the city will support more flexible and affordable options that work within the context of the local communities and support the safety goals of the FRA as well as the sustainability goals of EPA, HUD, DOT (FTA & FHWA). Addressing train horn noise and quiet zones is important to achieve local, regional, and national goals for multimodal transportation options, safety, housing, jobs, and the environment. Opportunities to amend the FRA train horn rules and quiet zone requirements, as well as identify funding sources for implementation, will address existing community concerns caused by train horn noise and support transportation options and mixed use, transit oriented development areas within the core areas of the city and other communities located along the Burlington Northern Santa Fe railroad corridor.

UNIVERSITY OF COLORADO

- **SUPPORT A RENEWED COMMITMENT BY THE STATE AND FEDERAL GOVERNMENTS TO FUND THE UNIVERSITY OF COLORADO AND ITS CAPITAL PROGRAMS**

The City of Boulder has been the proud home to the flagship campus of the University of Colorado (CU) since 1876. CU’s Boulder campus (CU-Boulder) brings to the city the Colorado Shakespeare Festival, the Conference on World Affairs, the CU Concerts and Artist Series, access to libraries, athletic events, noncredit courses, and numerous other social and cultural offerings, all of which significantly contribute to the city’s vibrancy. Furthermore, it directly employed 14,803 people in fiscal year (FY) 2011, 8,105 which were non-students (including temporary workers) earning average salaries of \$57,216, accounting for 5.2 percent of total employment in Boulder County. Through research, teaching, operations, construction, student spending, and visitation, CU is an economic driver in Boulder County, contributing more than \$1.5 billion in economic activity locally driven off \$809 million in direct expenditures in the county in FY2011. This funding is by and large non-local, thus leveraging outside investment for the local economy. The presence of CU’s research facilities and the highly skilled labor force that CU produces, have attracted major federal facilities, satellite institutions, and major private firms to the city. Yet, as reflected in the above graph, state funding for CU-Boulder has seen a dramatic decline over the last decade, a decline that

is anticipated to continue over at least the next two years. In light of the extraordinary importance of CU to the city, the city will support state and federal legislation that provides a renewed attention to funding CU, its capital programs (currently facing a maintenance backlog of approximately \$320 million), and particularly legislation that helps preserve the flagship status of the CU-Boulder campus.

WATER

- **SUPPORT LEGISLATION THAT PROMOTES THE EFFICIENT UTILIZATION AND CONSERVATION OF WATER**

Boulder is on the forefront of support for water conservation and efficient utilization of water. Boulder uses a water budget rate structure to reward the efficient use of water and penalize wasteful practices. Boulder has adopted water conservation goals for build-out that will help meet the city's adopted reliability criteria for water supplies without significant new water acquisitions when fully using water sources already owned by the city. Water conservation can be an important public outreach and educational tool and can help to maximize reservoir storage levels and water use reductions needed during drought periods. Although the first priority for conserved water is drought protection and the extent to which the city can direct conserved water to any particular use is limited, when reservoirs are full, some conserved water can be provided for non-permanent uses such as annual agricultural leasing or instream flow enhancement. Accordingly, Boulder will support legislation that promotes water conservation, instream flow enhancement and the efficient utilization of water when such legislation is structured to also be protective of the city's water rights. By way of example, the city would support legislation that would phase in a requirement that new indoor water fixtures (including toilets, urinals, showers and faucets) sold in Colorado meet reduced flush volume requirements consistent with the US Environmental Protection Agencies WaterSense guidelines, provided that the legislation would not mandate retrofitting nor require local governments to assure compliance.

- **OPPOSE SIGNIFICANT THREATS TO THE CITY'S WATER RIGHTS**

In prior years, Boulder has lost thousands of acre-feet of the city's water because of the lack of proper well augmentation on the South Platte River. Loss of this reservoir water increases Boulder's risk of severe water shortage during drought years. In non-drought years, the city supports Boulder Creek basin farmers through annual leases of any water in excess of the city's short-term and long-term needs for approximately \$30 per acre foot. Offsetting un-augmented well use in the South Platte basin would represent a \$120,000 loss to the city in a year that 4,000 acre-feet of water is given up and would also decrease water for Boulder Creek farmers by reducing the city's leasable supplies. If other water users with junior water rights were to operate without proper augmentation and cause Boulder to need to permanently replace the water rights for 4,000 acre-feet of municipal water to protect the

city against drought and any negative effects of climate change that might occur, it would cost \$48,000,000 or more.

Recent Colorado Supreme Court decisions have found that the State Engineer was not properly administering some water rights, such as for agricultural irrigation wells that were operating under junior water rights without providing senior water rights owners with sufficient augmentation water. New state legislation passed in the years from 2003 to 2009 clarifies that many well owners must file in water court for well augmentation plans and address the amount of augmentation water to be provided. To protect the yield of its existing water rights, Boulder has coordinated with other water users owning senior surface water rights, including many farmers, to participate in water court cases and monitor legislative actions regarding water rights. Many of the underlying disputes have now been addressed. Nevertheless, some issues remain that may result in the General Assembly again becoming the arena for water bills that attempt to incrementally adjust, or in many cases by-pass, the state constitution's Prior Appropriation Doctrine.

Bills that may be introduced might include attempts to limit the amount of augmentation water that junior diverters are required to return to the river to less than their impact on more senior water rights or to replace the jurisdiction of water courts with state engineer authority such that decisions on the adequacy of augmentation plans would be less transparent and subject to political influence. The city is committed to the legal principle of maximum utilization of both surface water and groundwater and believes this can best be achieved through water court-approved augmentation plans rather than the political process. To the extent that future bills significantly threaten the city's water rights, such as by shifting responsibility for well augmentation from well users to senior water rights owners, or increasing reliability for junior water rights by decreasing reliability for senior water rights, they will be vigorously opposed.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: Direction on Resolution No. 1159 concerning the use of neonicotinoid pesticides in the City of Boulder, including analysis and preliminary options

PRESENTER/S

Jane S. Brautigam, City Manager

David Driskell, Director of Community Planning and Sustainability

Susan Richstone, Deputy Director of Community Planning and Sustainability

Lesli Ellis, Comprehensive Planning Manager

Rella Abernathy, Integrated Pest Management Coordinator

Kathleen Alexander, City Forester

EXECUTIVE SUMMARY

The purpose of this item is to request City Council direction on a proposed Resolution Concerning the Use of Neonicotinoid Pesticides in the City of Boulder (see **Attachment A**). On January 20, 2015, [Bee Safe Boulder](#) members presented city council with a resolution entitled, “A Resolution Concerning the Use of Neonicotinoid Pesticides, Which Are Toxic to Honeybees, Other Pollinators and Many Other Species,” that prohibits the use of neonicotinoid insecticides on city properties (see **Attachment B**).

The resolution presented by Bee Safe Boulder requires that the city:

- does not use neonicotinoid products (neonics) on city properties;
- urges all levels of government to suspend the use of neonics until they have been properly reviewed and found safe;
- urges all businesses, homeowners and HOAs to take immediate steps to ensure that plants and seeds that are sold and used in the city do not contain neonicotinoids; and
- supports and actively engages in education efforts and encourages others to adopt similar policies.

The City Manager directed staff to review the resolution and return to City Council with a report. This memo provides council with an analysis of the resolution with options for council consideration and direction.

Staff from Community Planning and Sustainability, Parks and Recreation, Public Works, and Open Space and Mountain Parks analyzed the resolution to determine if current city practices support the requirements of the resolution. The majority of city actions are in alignment with the resolution language.

STAFF RECOMMENDATION

Staff recommends that the resolution be adopted with some revisions, including a stringent, transparent exemption process for well-defined research projects or for application to trees when the life or health of a significant or valuable tree is threatened and neonicotinoid application is the least environmentally impactful option. Staff met with Bee Safe Boulder, who also recommends inclusion of the exemption. City staff and Bee Safe Boulder collaborated together on preliminary resolution language and the revised draft, “A Resolution Concerning the Use of Neonicotinoid Pesticides in the City of Boulder” (**Attachment A**), is included for council review to provide direction for the final resolution, which will be brought back to council for consideration of adoption on May 5, 2015.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - Pollinators provide essential services for agriculture, provide fruit and vegetables in urban gardens and produce seeds and fruits in natural areas that support native wildlife that attract tourists. Aquatic invertebrates provide ecosystem services by filtering and cleaning surface waters and providing food for fish and birds. Trees and green spaces increase residential and business property values and the tax base, attract visitors, businesses and new residents to an area and increase occupancy and rental rates of apartments and offices. Shading from trees can defer maintenance longer for materials that are degraded by heat and lower utility bills.
- **Environmental** - Hundreds of peer-reviewed studies have implicated neonicotinoid insecticides as one of the factors contributing to the decline of honeybees, native bees, soil organisms, birds and other animals. Studies are beginning to emerge suggesting that neonic exposure to humans may be associated with health issues. At the same time, trees and other plant material provide many environmental benefits to the community. Urban trees and green spaces help to reduce carbon dioxide and other pollutants, improve water quality, reduce storm water runoff and save energy.
- **Social** - Social scientists have shown that trees and green spaces within cities provide social and psychological benefits and improve the quality of life for residents. Connection to both trees and wildlife, such as birds and butterflies, affects moods, activities and emotional health. It can reduce stress, enhance health and increase recreational opportunities. The urban forest is usually the first impression a community projects to its visitors. The city also provides a healthy environment for people and animals from the reduction or elimination of

pesticides on public properties that puts people at ease when their children or pets visit city parks and facilities.

OTHER IMPACTS

- **Fiscal** - Sources of plant materials, seeds and trees that have not been treated with neonicotinoid pesticides are limited and may cost significantly more than materials that have been treated or where the treatment history of the materials is known.
- **Staff time** – Additional staff time will be required to ensure bee safe plant material is used. Education of vendors, interviewing vendors to determine pest control practices of nursery stock, searching for new vendors and developing new procurement procedures all take significant staff time, which could require reprioritization of other work program items.

BOARD AND COMMISSION FEEDBACK

Parks and Recreation Advisory Board: At the March 23, 2015 meeting, the Parks and Recreation Advisory Board (PRAB) unanimously supported adoption of the staff recommendation for the Bee Safe Boulder resolution with revisions to incorporate a transparent exemption process for research projects involving neonicotinoids and for application of neonicotinoids when the life or health of a significant or valuable tree is at risk. PRAB also supported the city engaging the public in efforts to better protect pollinators.

Environmental Advisory Board: The Environmental Advisory Board (EAB) will be providing input on April 1, 2015, and staff will provide a verbal update to council of EAB feedback.

PUBLIC FEEDBACK

Approximately 20 people provided comments during the January 20, 2015 city council meeting in support of the resolution presented by Bee Safe Boulder. City Council has received emails from 24 people supporting the resolution and emails from two individuals who have criticized the resolution and the city's approach to pesticide reduction. One person who is against the resolution has sent multiple emails.

Public input for proposed revisions to the resolution will be gathered over the next month through Inspire Boulder, an open house tentatively scheduled for April 13, 2015 and other outreach activities.

BACKGROUND

Neonicotinoid (neonic) insecticides are a class of relatively new pesticides that were first released in early 1990's. Today, neonics are widely used in urban applications to turf, trees and ornamental plants. They are commonly used in greenhouses, for termite treatments and in flea collars for pets. Additionally, they are applied as foliar sprays in agriculture and as pesticide coatings of crop seed, making them one of the most commonly and widely used pesticides in the world. Neonics are highly toxic to insects at tiny doses, are water soluble and extremely persistent in soil and water. They have a high probability of leaching into water and are often detected in surface and ground water.

These systemic pesticides are taken up by plants and distributed throughout the plant, making all parts of it toxic to insects, including the leaves, seeds, pollen, nectar and dew drops. Due to the persistence of neonics, annual plants can contain the pesticide for an entire season, and they have been detected in excess of a year after treatment in woody plants. This provides protection to the plants from pest insects, but can harm non-targets, such as bees, butterflies and other beneficial organisms. Furthermore, neonics and their breakdown products can build up in soils, killing earthworms and beneficial insects that are predators of pest insects. Untreated plants can become contaminated from movement of neonics away from the original application site. The mobility of neonics allows them to contaminate surface water where they are extremely toxic to aquatic insects, such as dragonflies and mayflies. Hundreds of studies have implicated neonics as one of the stressors that are contributing to the decline of bees, aquatic invertebrates and birds. In response, several communities have started restricting their use. The European Union has banned some agricultural uses and some individual European countries have additional restrictions.

Several members of the Boulder community, including Fairview High School students from the NetZero Club spoke during the public comment period of the January 20, 2015 city council meeting to support the local community group Bee Safe Boulder's resolution, "A Resolution Concerning the Use of Neonicotinoid Pesticides, Which Are Toxic to Honeybees, Other Pollinators and Many Other Species" (see **Attachment B**).

The City Manager directed staff to review the resolution and return to council with a report.

ANALYSIS

Staff analyzed the original resolution language that was brought to city council by Bee Safe Boulder. The majority of city practices and policies are currently in alignment with the resolution. Staff from across city departments reviewed the resolution and preliminary options and offered feedback about how the resolution could be tailored to result in long-term success and provide an example for city residents and other communities. The four topics addressed in the resolution are:

1. The application of neonics;
2. Urging improvements in governmental regulation of neonics;
3. Use of landscaping materials pre-treated with neonics; and
4. Education and outreach.

Each of these specific sections from the original draft of the Bee Safe Boulder resolution (**Attachment B**) is analyzed below:

Analysis of Section 1: The Application of Neonics

Section 1: That the city will not procure nor use neonicotinoid products, or products containing neonicotinoid-active ingredients, for any purpose on its parks, playing fields, rights of way, along watersheds and ditches, open space lands

either solely or jointly owned, public landscaping, public trees and landscapes or in its buildings or other areas under its ownership and jurisdiction.

The city bans the majority of pesticides on public properties and relies primarily on prevention and non-chemical pest control methods. Only one neonicotinoid, imidacloprid, has ever been allowed on city properties and all uses are prohibited except for tree injections under rigorous criteria for insect pests of valuable trees when the life or health of a tree is threatened. Only trees that are wind-pollinated can be considered for treatment and additional safeguards are in place to protect insects that might collect pollen by timing any application after flowering has already occurred. Over the last 10 years, an average of 28 of the city's 38,000 public trees have been treated with imidacloprid each year. Most of these applications are unlikely to be considered today, due to imidacloprid becoming less and less effective for the specific pests the city used it for in the past. No imidacloprid applications occurred in 2014. City staff is seeking alternatives.

In March 2014, the City Manager [prohibited](#) the use of imidacloprid to treat emerald ash borer on city properties and on street trees in public rights-of-way, due to inconsistent control and unacceptable environmental risks.

Trees offer significant environmental benefits, such as mitigation of greenhouse gasses and urban heat island effects, lowering of energy use due to shading and reduction of storm water. Significant trees in the city, such as the red oaks in Central Park, are over 90 years old. One newly discovered pest killed four of these red oaks, and pesticide treatments were required to save 23 other red oaks in the Municipal area. In rare situations such as this example, the risks from pesticide use and the benefits provided by mature trees need to be balanced. The city is formalizing a process for determining the process for when or if a tree should be treated with a systemic pesticide to save it. With climate change and other environmental stressors, it is unpredictable when invasive pests could strike and threaten parts of the urban tree canopy.

Unless a formal, transparent process that addresses potential situations where pesticides might need to be considered and this process is vetted and thoroughly reviewed by outside experts, entities can find themselves in a position where emergency decisions are made in the face of a destructive, invasive pest without having the time to consider the repercussions.

City staff is consulting with other progressive local governments, research scientists, and nonprofit organizations that lead the pollinator protection effort to develop a tree treatment decision process that balances the protection of pollinators and other at-risk non-target species and protecting trees. Staff is also working with researchers from Colorado State University to test the efficacy and environmental impacts of dinotefuran, another neonicotinoid insecticide, for specific pests. This work is also being discussed with scientists from other institutions and with leading organizations with expertise on neonics and their environmental impacts. Staff will provide an overview of this process

during the council presentation on April 7, 2015 and will provide a detailed exemption process in the May 5, 2015 packet.

Analysis of Section 2: Urging Improvements in Governmental Regulation of Neonics

Section 2: That the city hereby urges all related parties, both public and private, at the county, state and federal levels to suspend use of all neonicotinoids until a proper scientific, legal and regulatory review of their impacts on honeybees and other pollinators, and a full public health and environmental assessment, prove their safety for humans as well.

The city is actively involved in legislative action to improve pesticide-related laws at all levels of government as a part of the city's formal legislative agenda. The city supports changes to state pesticide law to improve protections for pollinators and staff has testified in Washington DC at a listening session hosted by the Environmental Protection Agency (EPA) and United States Department of Agriculture (USDA) as part of the President's Pollinator Health Task Force. The city supports the U.S. Congressional bill co-sponsored by Representative Jared Polis, "Saving America's Pollinators Act" and has met with Colorado's congressional delegation to encourage support for this bill as well as educating and encouraging other actions to provide protection to pollinators.

Analysis of Section 3: Use of Landscaping Materials Pre-treated with Neonics

Section 3: That the city hereby urges all businesses, homeowners, HOAs and pest service companies operating within the city to take immediate steps to ensure no plants, seeds or products containing neonicotinoids are purchased, sold or used within the city.

Neonics are commonly used in the nursery industry and reports by the environmental nonprofit, Friends of the Earth, have found that flowers of bee-friendly plants sold at big box retailers contain one or more neonics more than 50 percent of the time. As presented in the original resolution language, this section does not explicitly direct the city to seek to purchase plants and landscaping materials that have not been pre-treated with neonics. This is an issue that city staff has been aware of for some time and has been taking steps to address.

Over the last year, staff has been working across departments to determine if plants and landscaping materials purchased by the city are pre-treated with neonics. A consultant, Conservation Impact, has been working with the city to develop a procurement plan to transition to neonic-free plant materials.

Of the cities and counties that have banned neonic applications, most have not included pre-treated landscaping materials in their resolutions. In July of 2014, Shorewood, Minnesota passed a resolution that bans neonic application and designates "Bee Safe areas," where future plantings are free of neonics. Portland, Oregon will be considering a

resolution on April 1, 2015 that also addresses pre-treatment of plants. The nursery industry is beginning to shift and neonic-free offerings are starting to expand. Through its purchasing, the city can support some of these “early adopters” and play a leadership role for other communities.

Analysis of Section 4: Education and Outreach

Section 4: That the city recognizes the importance of pollinators and their services, and will support and actively engage in efforts to educate the broader community about the actions it is taking; and, furthermore, the city will encourage other entities, businesses, schools, neighborhoods and households, and also the county, state and the federal governments to adopt similar policies.

The city recognizes the importance of pollinators and has been involved in community education about these issues through information on the [city’s website](#), workshops and presentations on various panels and events. The city is also participating in collaborative efforts with other local governments, citizen groups, and national nonprofits.

OPTIONS

Staff considered the following options:

1. Adopt the Bee Safe Boulder resolution as presented to city council with a complete ban of neonicotinoids on city properties with no exemptions (see **Attachment B**).
2. Adopt the Bee Safe Boulder resolution supporting a ban of neonicotinoids on city properties with a rigorous, tightly-bounded, transparent exemption process when the life or health of a significant or valuable tree is at risk. Include an exemption for research studies. Partner with Bee Safe Boulder to collaborate on the final draft for city council (see **Attachment A**. *Note: A tracked change version is also provided as part of the attachment.*).
3. Do not adopt a pollinator protection resolution.

STAFF RECOMMENDATION

Staff recommends that City Council consider a resolution that includes an exemption process for research and treatment of trees as jointly drafted by Bee Safe Boulder and the city (Option 2). City IPM and Urban Forestry staff were in the process of developing a formal process for tree treatments before the resolution was presented to city council and have been collaborating with other cities and counties with similar programs and with research scientists and the major non-profit organizations taking the lead on pollinator protection efforts nationwide.

Staff met with representatives of Bee Safe Boulder and NetZero on March 5, 2015, and all parties were in agreement that including an exemption process is the preferred approach for moving forward with the resolution. Staff later met with Bee Safe Boulder on March 17 and reviewed and revised preliminary resolution language to ensure that it is in alignment with city policies and positions, while retaining Bee Safe Boulder’s original

goals for the resolution. The analysis of each section served as a guide for suggested revisions to each section, which is provided for city council consideration in **Attachment A**. Deletions and additions to the original language are also provided as part of the Attachment.

NEXT STEPS

- April 1- May 5, 2015 - Staff will solicit input from the public through Inspire Boulder, an open house tentatively scheduled for April 13, radio interviews and Inside Boulder News.
- May 5, 2015 - Public hearing for council consideration for adoption of the resolution.

ATTACHMENTS

- **Attachment A:** Joint Staff/Bee Safe Boulder Draft of Preliminary Resolution: Concerning the Use of Neonicotinoid Pesticides in the City of Boulder (also includes a tracked changes version with the clean version)
- **Attachment B:** Initial Draft of Bee Safe Boulder Resolution Presented to City Council on January 20, 2015

City of Boulder

A Resolution Concerning the Use of Neonicotinoid Pesticides in the City of Boulder

WHEREAS, neonicotinoids, one of the most widely used classes of insecticides, are systemic, persistent neurotoxins that translocate throughout all parts of plants, including leaves, pollen and nectar; and

WHEREAS, a large and growing body of independent, peer-reviewed scientific studies demonstrate that neonicotinoids adversely impact beneficial soil invertebrates, avian and aquatic organisms, contaminate water resources and soils, and contaminate the pollen and nectar that is gathered by pollinators; and

WHEREAS, studies have shown that neonicotinoids are endangering pollinators through acute poisonings as well as through chronic sublethal exposures, which can weaken immune defenses, causing increased susceptibility to natural stressors such as parasites, pathogens (bacterial, viral and fungal diseases), and poor nutrition due to habitat loss and industrial agricultural systems. Studies have shown other adverse effects associated with neonicotinoids, including delays in larval development, decreases in queen survival and negative effects on feeding, navigational and reproductive behaviors; and

WHEREAS, the loss of pollinators is alarmingly high, with commercial honeybee colonies experiencing as much as 50 percent over-winter losses each year since 2006, and with a dramatic decline in populations of wild bees, butterflies, birds and other pollinators; and

WHEREAS, threats to pollinators concern the entire food system, where pollination services provided by honeybees and other essential pollinators account for one in every three bites of food and are valued at \$20 to \$30 billion in agricultural production annually in the United States; and

WHEREAS, municipal, residential and commercial use of neonicotinoid and other systemic pesticides on home gardens, public parks, school grounds and other local and municipal areas pose unacceptable risks to bees, other pollinators and aquatic invertebrates, and furthermore their introduction into the environment is often unintentional and/or inadvertent, since labeling is not required for treated nursery plants and most consumer gardening products do not include risks to pollinators on the label; and,

WHEREAS, this same municipal, residential and commercial use of neonicotinoid and other systemic pesticides on home gardens, public parks, school grounds and other local and municipal areas may pose health risks to human residents; and

WHEREAS, the use of hazardous and persistent pesticides, including systemic neonicotinoids, is not necessary to create and maintain green lawns and landscapes, home or public gardens or open spaces, given the availability of viable alternative practices and products; and

WHEREAS, responding to scientific studies and finding that neonicotinoids pose unacceptable hazards to pollinators, the European Union in 2013 instituted a two-year moratorium on some uses of

neonicotinoids, while US cities and counties, including Eugene, OR, Thurston County, Spokane and Seattle, WA, Shorewood and St. Louis Park, MN and Portland, OR have instituted resolutions and/or bans against municipal use of neonicotinoids, while the US Fish and Wildlife Service has banned the use of neonicotinoids on all 150 million acres of its National Wildlife Refuge System; and

WHEREAS, two neighborhoods, two churches and over 500 households in the City of Boulder and Boulder County have already demonstrated the feasibility of neighbors coming together to improve the habitat of bees and other pollinators; and

WHEREAS, in response to local citizen lobbying, fourteen retailers in both Boulder City and County have already pledged to offer and label Bee Safe garden products, ranging from organic pesticides and fertilizers to plants and landscaping materials.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BOULDER:

Section 1: That the city will not apply neonicotinoid-active ingredients for any purpose on its city-managed parks, playing fields, rights of way, along watersheds and ditches, open space lands, public trees and landscapes or in its buildings or other areas under its ownership and jurisdiction, with exceptions only being allowed under a rigorous, transparent exemption process for the application of neonicotinoids for the purposes of (1) a well-defined research study; or (2) when the life or health of a valuable or significant tree is threatened and neonicotinoid application is the least environmentally impactful option.

Section 2: That the city hereby urges all related parties, both public and private, at the county, state and federal levels to suspend neonicotinoids for use in seed treatment, soil application or foliar treatment on bee attractive plants, trees and cereals in urban and agricultural settings, until a proper scientific, legal and regulatory review of their impacts on honeybees, other pollinators, natural enemies and non-target organisms is completed and a full public health and environmental assessment proves their safety.

Section 3: That the city will seek to purchase landscaping materials, including plants and seeds, that have not been treated with neonicotinoids and hereby urges all businesses, homeowners and HOAs operating within the city to take similar steps to ensure no plants, seeds or products containing neonicotinoids are purchased, sold or used within the city.

Section 4: That the city recognizes the importance of pollinators and their services, and will support and actively engage in efforts to educate the broader community about the actions it is taking; and, furthermore, the city will encourage other entities, businesses, schools, neighborhoods and households, and also the county, state and the federal governments to adopt similar policies.

City of Boulder

A Resolution Concerning the Use of Neonicotinoid Pesticides in the City of Boulder Which Are Toxic to Honeybees, Other Pollinators and Many Other Species

WHEREAS, neonicotinoids, one of the most widely used classes of insecticides, are systemic, persistent neurotoxins that translocate throughout all parts of plants to remain, including leaves, pollen and nectar; and neonicotinoids are poisonous; and

WHEREAS, an independent review of more than 800 a large and growing body of independent, peer-reviewed scientific studies concluded demonstrate that neonicotinoids contaminate soil, adversely impact beneficial soil invertebrates, and avian and aquatic organisms, contaminate water resources and soils, and spread throughout a treated plant, including to the and contaminate the pollen and nectar that is gathered by pollinators; and this reality is independently supported; and

WHEREAS, studies have shown that neonicotinoids are responsible for the death or the weakening of are endangering pollinators through acute poisonings as well as through chronic sublethal exposures, which can weaken immune defenses, in pollinators causing them to succumb to other threats increased susceptibility to natural stressors such as parasites, bacterial/viral diseases and weather events, pathogens (bacterial, viral and fungal diseases), and poor nutrition due to habitat loss and industrial agricultural systems. Studies have shown other adverse effects associated with neonicotinoids, including delays in larval development, decreases in queen survival and negative effects on feeding, navigational and reproductive behaviors; and

WHEREAS, the loss of pollinators is alarmingly high, with commercial honeybee colonies experiencing as much as 50 percent over-winter losses each year since 2006, and with a dramatic decline in populations of wild bees, butterflies, birds and other pollinators; and

WHEREAS, threats to pollinators concern the entire food system, where pollination services provided by honeybees and other essential pollinators account for one in every three bites of food and are valued at \$20 to \$30 billion in agricultural production annually in the United States; and

WHEREAS, municipal, residential and commercial use of neonicotinoid and other systemic pesticides on home gardens, public parks, school grounds and other local and municipal areas pose unacceptable risks to bees and, other pollinators and aquatic invertebrates, and furthermore their introduction into the environment is often unintentional and/or inadvertent, since labeling is not required for treated nursery plants and most consumer gardening products do not include risks to pollinators on the label; and,

WHEREAS, this same municipal, residential and commercial use of neonicotinoid and other systemic pesticides on home gardens, public parks, school grounds and other local and municipal areas poses may pose health risks to human residents; and

WHEREAS, the use of hazardous and persistent pesticides, including systemic neonicotinoids, is not necessary to create and maintain green lawns and landscapes, home or public gardens or open spaces, given the availability of viable alternative practices and products; and

WHEREAS, responding to scientific ~~concern over the impact~~ **studies and finding that neonicotinoids pose unacceptable hazards to pollinators**, the European Union in 2013 instituted a two-year moratorium on ~~the use~~ some uses of neonicotinoids, while US cities and counties, including Eugene, OR, Thurston County, and Spokane and Seattle, WA, Shorewood and **St. Louis Park**, MN and ~~Denver, CO~~ Portland, OR have instituted resolutions and/or bans against municipal use of neonicotinoids, while the US Fish and Wildlife Service has banned the use of neonicotinoids on all 150 million acres of its National Wildlife Refuge System; and

WHEREAS, two neighborhoods, two churches and over 500 households in the City of Boulder and Boulder County have already demonstrated the feasibility of neighbors coming together to improve the habitat of bees and other pollinators; and

WHEREAS, in response to local citizen lobbying, fourteen retailers in both Boulder City and County have already pledged to offer and label Bee Safe garden products, ~~everything~~ **ranging** from organic pesticides and fertilizers to plants and landscaping materials.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BOULDER:

Section 1: That the city will not ~~apply procure nor use neonicotinoid products, or products containing~~ neonicotinoid-active ingredients, for any purpose on its **city-managed** parks, playing fields, rights of way, along watersheds and ditches, open space lands ~~either solely or jointly owned~~, ~~public landscaping~~, public trees and landscapes or in its buildings or other areas under its ownership and jurisdiction, **with exceptions only being allowed under a rigorous, transparent exemption process for the application of neonicotinoids for the purposes of a (1) a well-defined research study; or (2) when the life or health of a valuable or significant tree is threatened and neonicotinoid application is the least environmentally impactful option.**

Section 2: That the city hereby urges all related parties, both public and private, at the county, state and federal levels to suspend ~~use of all~~ neonicotinoids **for use in seed treatment, soil application or foliar treatment on bee attractive plants, trees and cereals in urban and agricultural settings**, until a proper scientific, legal and regulatory review of their impacts on honeybees, other pollinators, natural enemies and non-target organisms is completed and a full public health and environmental assessment proves their safety.

Section 3: That the **city will seek to purchase landscaping materials, including plants and seeds, that have not been treated with neonicotinoids** and hereby urges all businesses, homeowners and HOAs ~~and pest service companies~~ operating within the city to take similar steps to ensure no plants, seeds or products containing neonicotinoids are purchased, sold or used within the city.

Section 4: That the city recognizes the importance of pollinators and their services, and will support and actively engage in efforts to educate the broader community about the actions it is

taking; and, furthermore, the city will encourage other entities, businesses, schools, neighborhoods and households, and also the county, state and the federal governments to adopt similar policies.

DRAFT

City of Boulder

A Resolution Concerning the Use of Neonicotinoid Pesticides, Which Are Toxic to Honeybees, Other Pollinators and Many Other Species

WHEREAS, neonicotinoids, one of the most widely used classes of insecticides, are systemic, persistent neurotoxins that translocate throughout all parts of plants to remain in leaves, pollen and nectar; and neonicotinoids are poisonous, and

WHEREAS, an independent review of more than 800 scientific studies concluded that neonicotinoids contaminate soil, adversely impact beneficial soil, invertebrates and avian and aquatic organisms, contaminate water resources and soils, and spread throughout a treated plant, including to the pollen that is gathered by pollinators; and this reality is independently supported, and

WHEREAS, studies have also shown that neonicotinoids are responsible for the death or the weakening of immune defenses in pollinators, causing them to succumb to other threats, such as parasites, bacterial/viral diseases and weather events, and

WHEREAS, the loss of pollinators is alarmingly high, with commercial honeybee colonies experiencing as much as 50 percent over-winter losses each year since 2006, and with a dramatic decline in populations of wild bees, butterflies, birds and other pollinators; and

WHEREAS, threats to pollinators concern the entire food system, where pollination services provided by honeybees and other essential pollinators account for one in every three bites of food; and

WHEREAS, municipal, residential and commercial use of neonicotinoid and other systemic pesticides on home gardens, public parks, school grounds and other local and municipal areas pose unacceptable risks to bees and other pollinators; and,

WHEREAS, this same municipal, residential and commercial use of neonicotinoid and other systemic pesticides on home gardens, public parks, school grounds and other local and municipal areas poses health risks to human residents; and

WHEREAS, the use of hazardous and persistent pesticides, including systemic neonicotinoids, is not necessary to create and maintain green lawns and landscapes, home or public gardens or open spaces, given the availability of viable alternative practices and products; and

WHEREAS, responding to scientific concern over the impact of neonicotinoids on pollinators, the European Union in 2013 instituted a two-year moratorium on the use of neonicotinoids, while US cities and counties, including Eugene, OR, Thurston County and Spokane and Seattle, WA, Shorewood, MN and Denver, CO, have instituted resolutions and/or bans against municipal use of neonicotinoids, while the US Fish and Wildlife Service has banned the use of neonicotinoids on all 150 million acres of its National Wildlife Refuge System, and

WHEREAS, two neighborhoods, two churches and over 500 households in the City of Boulder and Boulder County have already demonstrated the feasibility of neighbors coming together to improve the habitat of bees and other pollinators , and

WHEREAS, in response to local citizen lobbying, fourteen retailers in both Boulder City and County have already pledged to offer and label Bee Safe garden products, everything from organic pesticides and fertilizers to plants and landscaping materials,

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BOULDER:

Section 1: That the city will not procure nor use neonicotinoid products, or products containing neonicotinoid-active ingredients, for any purpose on its parks, playing fields, rights of way, along watersheds and ditches, open space lands either solely or jointly owned, public landscaping, public trees and landscapes or in its buildings or other areas under its ownership and jurisdiction.

Section 2: That the city hereby urges all related parties, both public and private, at the county, state and federal levels to suspend use of all neonicotinoids until a proper scientific, legal and regulatory review of their impacts on honeybees and other pollinators, and a full public health and environmental assessment, prove their safety for humans as well.

Section 3: That the city will strongly urge businesses, homeowners, HOAs and pest service companies operating within the city to take immediate steps to ensure no plants, seeds or products containing neonicotinoids are purchased, sold or used within the city.

Section 4: That the city recognizes the importance of pollinators and their services, and will support and actively engage in efforts to educate the broader community about the actions it is taking and encourage other entities, businesses, schools, neighborhoods and households to adopt similar policies.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE: Consideration of a motion to approve a work plan in support of City Council's request for further research and information to guide future decisions in support of the city's commitment to a safe and welcoming community.

PRESENTER/S

Jane S. Brautigam, City Manager
Greg Testa, Police Chief
Karen Rahn, Human Services Director
Mary Ann Weideman, Assistant City Manager

I. EXECUTIVE SUMMARY

At the March 17, 2015 City Council meeting, several community members voiced concerns regarding the sense of safety in our community. City Council directed staff to follow up on the issues raised and this memo proposes a work plan for council consideration to:

1. Address current community member vacancies on the Police Professional Standards Review Panel,
2. Ensure the structure and process of the Police Professional Standards Review Panel remains a best practice,
3. Provide transparent information through an independent analysis of the Police Department's arrest and summons data, and
4. Support the Human Relations Commission (HRC) in its role to advise City Council on efforts that foster inclusivity and community building in Boulder.

The proposed work plan is intended to address community concerns as we work together as one community to ensure that Boulder remains a welcoming, safe and respectful place.

II. STAFF RECOMMENDATION

Suggested Motion Language:

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

Motion to approve a work plan in support of City Council's request for further research and information to guide future decisions in support of the city's commitment to a safe and welcoming community.

III. BACKGROUND

The City of Boulder values the diversity of our community and respects all who live, work, and recreate in our community. The city continues to be committed to its role in supporting a safe and welcoming community. Given recent national events, it is important to engage in dialogue and actions that align with the city's role to provide for a welcoming, respectful and safe community.

As a follow up to the discussions at the March 16 HRC meeting (Attachment A) and March 17 City Council meeting, staff proposes a work plan to:

1. Address current community member vacancies on the Police Professional Standards Review Panel,
2. Ensure the structure and process of the Police Professional Standards Review Panel remains a best practice,
3. Provide transparent information through an independent analysis of the Police Department's arrest and summons data, and
4. Support the Human Relations Commission in its role to advise City Council on efforts that foster inclusivity and a safe and welcoming community.

The proposed work plan is intended to address community concerns as Council and staff continue to work collaboratively with the community to ensure that Boulder remains a welcoming, safe and respectful place.

IV. PROPOSED WORK PLAN

Staff proposes the following work plan to address the needs identified at the March 16 HRC meeting and March 17 City Council meeting:

1. Address Current Vacancies on the Police Professional Standards Review Panel

The Police Professional Standards Review Panel is established by the Boulder Police Department under its General Order 120 and reviews investigations into allegations

of misconduct filed against members of the police department. It consists of six community members and six members of the police department. Six members of the panel are appointed by the Chief of Police from both commissioned and non-commissioned department personnel, and six are community members appointed by the City Manager. The community members must be willing to serve a minimum of a two year term and assume their new terms in the early Spring. At present, the terms of four members are expiring and staff is in the process of filling these positions. With positions expiring, it is important to move forward with the selection process to make sure that the panel is functioning with the full complement of community members.

The city has received applications from 29 qualified community members, indicating a strong interest in serving on this important panel. In early April, an initial interview committee will recommend the most qualified 8-10 applicants for a final interview with a second interview committee consisting of the City Manager, Human Services Director, a community member, and another member of the city staff. From these final interviews, the City Manager will select the four new members of the Police Professional Standards Review Panel. This will allow the Review Panel to continue its important work in the coming months, and will allow the City Council the time it needs to consider whether a new process should be undertaken for the appointment of community members in the future.

2. Ensure the Structure and Process of the Police Professional Standards Review Panel Remains a Best Practice

The Police Professional Standards Review Panel was established in 1993 as a best practice. It continues to serve as a leading model within Colorado and across the nation. Since the time of its inception, other models have emerged and it would be helpful to understand those models and other emerging ideas.

In support of the city's emphasis on service excellence, the City Manager's Office in partnership with the Police Department, is seeking to contract for professional services with the Police Executive Research Forum (PERF) to provide research and analysis on other Police Professional Standards Review Panel models and processes. PERF, founded in 1976 as a non-profit organization, is a police research and policy organization and a provider of management services, technical assistance, and executive-level education to support law enforcement agencies. PERF helps to improve the delivery of police services through the exercise of strong national leadership; public debate of police and criminal justice issues; and research and policy development. More information on PERF may be found at www.policeforum.org.

Staff is currently working on a scope of work with PERF. It is anticipated this research and analysis effort will take place over the next few months with a report and staff recommendation to City Council planned for the third quarter.

3. Provide Transparent Information through an Independent Analysis of the Boulder Police Department's Arrest and Summons Data

The City of Boulder values transparency and welcomes any information that may support continuous improvement efforts. To support these values, the City Manager's Office in partnership with the Police Department, is seeking to contract for professional services with PERF (described above) to conduct an independent analysis of the Police Department's arrest and summons data.

Staff is currently working on a scope of work with PERF. It is anticipated this research and analysis effort will take place over the next few months with a report and staff recommendation to City Council planned for the third quarter.

4. Support the HRC in its Role to Advise on Efforts that Provide for a Safe Community

The HRC has a role to advise City Council on current and new city efforts that provide for a safe and welcoming community. Staff is committed to support the HRC in further clarifying its role and assist in developing a draft work item to address the city's goal of being a safe community for all who live, work and play in our community.

This work item is planned for discussion at the next HRC meeting scheduled on April 20. It is anticipated the HRC's efforts on this item will be available to present to City Council no later than the third quarter of 2015. This timeline will support Council's interest in having a complete set of information available at the same time.

V. NEXT STEPS

1. Continue with Police Professional Standards Review Panel interviews as scheduled.
2. Determine scope of work and contract with PERF to provide research and analysis on best practices and other Police Professional Standards Review Panel models and processes.
3. Determine scope of work and contract with PERF to conduct an independent analysis of the Police Department's arrest and summons data.
4. Prepare information on this work item for the April 20 HRC meeting packet.

VI. ATTACHMENT

Attachment A: DRAFT March 16 HRC Minutes

**Human Relations Commission
Monday, March 16, 2015
Council Chambers
1777 Broadway
Boulder, CO 80301
6:00 p.m.**

COMMISSIONERS PRESENT:

Emilia Pollauf
Nikhil Mankekar
Shirly White
Amy Zuckerman

COMMISSIONERS ABSENT:

José Beteta

STAFF PRESENT:

Carmen Atilano
Kim Pearson
Robin Pennington
Karen Rahn

I. Call to Order

The March 16, 2015 HRC meeting was called to order at 6:00 p.m. by **A. Zuckerman**.

II. Agenda Adjustments

Discussion/Informational Item 6. A. Presentation by Police Chief Greg Testa was moved up ahead of Action Items V.

III. Approval of Minutes

S. White moved to approve the Feb. 23, 2015 minutes. **N. Mankekar seconded. Motion carries 4-0.**

IV. Community Participation

Community members Cynthia Beard, Darren O'Connor, Judith Landsman, Derrick Jones, Jen Watson and Rob Smoke addressed the commission regarding community safety, racial issues, policing and homelessness and the need for continued community dialog. C. Beard commented on the USA Today analysis on racial disparity of arrests in Boulder; and the hope that we can cultivate a more racially diverse and racially inclusive community. D. O'Connor commented on the need for people of color to feel safe in the community. J. Landsman spoke about the experiences of her family and how her children of color had been treated differently than her white children. She commented that she had been unable to find a place to complain about the treatment. D. Jones spoke of his experience feeling unwelcome in Boulder and his experience with the police in both his professional and his personal life. J. Watson commented on the need for collaboration between the HRC, the police department, City Council and community groups such as the Boulder Coalition and Alliance on Race (BCAR) and asked for additional information on the trainer chosen to provide diversity training for the police department. R. Smoke commented on the need for accountability, housing, and on the ongoing homeless problem in Boulder.

V. Action Items

A. 2015 HRC Work Plan – The HRC approved its 2015 Work Plan with the addition of an item under Community Relations, Community Education/Awareness to explore the recommendation to City Council of a Caesar Chavez municipal holiday. **N. Mankekar moved** to accept the 2015 HRC Work Plan as amended. **E. Pollauf seconded. Motion carries 4-0.**

1. MLK Day Events – A. Zuckerman spoke about the opportunity to further engage the community in discussion and encourage excitement about the future of MLK Day in Boulder. **S. White moved** to postpone this item to April. **N. Mankekar seconded. Motion carries 4-0.**
2. Funding Allocations – **E. Pollauf moved** to postpone this item to April. **N. Mankekar seconded. Motion carries 4-0.**

VI. Discussion/Informational Items

A. Presentation by Police Chief Greg Testa – Chief Testa provided information on the philosophy and the practice of community policing in Boulder, giving examples of community partnerships and collaborative relationships such as EDGE (Early Diversion Get Involved, a program with mental health partners teamed with police officers who can respond directly and provide immediate mental health resources to those in need in the community); department outreach to the immigrant community as well as to the homeless and CU populations; and other programs involving youth and adults. He gave background on the hiring and training of police officers, the Professional Standards Review Panel review process, and statistics from the recently released Arrest Citation Data Report. He also provided information on the background of the department’s diversity trainer, Wendell Pryor. A Q&A with the commissioners followed the presentation. Topics included officer recognition and goals related to community policing; officer discretion in issuing citations and the options available to them as alternatives to detention; the grant-funded state restorative justice expansion pilot program for juveniles through the Boulder County District Attorney’s office; the make-up of the Professional Standards Unit; police interactions with the homeless including plans for a Homeless Outreach Team; police training including training on bias-motivated crimes; the reasons for reluctance some people experience calling the police which include mistrust, and how to break down barriers; the importance of transparency; the importance of continued dialog at both the community and individual levels and the importance of the commitment of police leadership.

In response to community participation, K. Rahn provided an update on an April 25 City Council Information Packet on homelessness including updates on the 25 Cities Project pilot; the Consortium of Cities in Boulder County supportive housing study; partnerships with other communities across the Denver Metro area working on the regional coordination and support, particularly in the areas of supportive housing and landlord-tenant issues. C. Atilano gave examples where the HRC, Police Department and the community had worked together in the past to bring matters to City Council for consideration, resulting in the passage of the Sentence Enhancement Ordinance and the Failure to Pay Wages Ordinance. She referred the commissioners to the memo provided by City Attorney Carr where he outlined City Council’s guiding principles that set the definition of the HRC’s role, also noting that council did look at the review panel in 2014. Commissioners discussed the value of obtaining demographic data on all police dispositions by contact including arrest and non-arrests.

Commissioners and staff discussed possible next steps regarding a community dialog or forum around race relations and agreed to table any decisions until further information had been obtained and reviewed, and an appropriate topic and meeting format determined.

B. Living Wage Update – C. Atilano gave an update on work of the city staff committee on Living Wage, which is currently benchmarking peer communities. The analysis and recommendation to City Manager is expected to be completed this year.

C. Event Reports – C. Atilano brought forward a request by BMoCA for a commissioner to give a welcoming statement at Dia del Niño on April 25. **S. White** agreed to do so. **A. Zuckerman** attended a meeting to plan a community educational event on Wage Theft.

D. Follow Up Tasks – Submit the Feb. 23, 2015 minutes, update the 2015 HRC Work Plan, postpone discussion of the MLK Day Event RFP to April and promote community interest about it, include the HRC event funding RFPs and CIF application in the April packet, send commissioners a link to the Arrest Citation Data Report located on the Boulder Police Department web page, contact BMoCA regarding Dia del Niño.

VII. Immediate Action Items
None.

IX. Adjournment
N. Mankekar moved to adjourn the March 16, 2015 meeting. **E. Pollauf** seconded the motion. **Motion carries 4-0.** The meeting was adjourned at 8:48 p.m.

Attested:

Approved:

Board Secretary

HRC Chairperson



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE April 7, 2015

AGENDA TITLE: Request for Council direction regarding assistance to mobile home owners in Boulder

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Bob Eichen, Chief Financial Officer
Maureen Rait, Executive Director, Public Works
David Driskell, Executive Director, Community Planning and Sustainability
Dave Thacker, Chief Building Official
Jeff Yegian, Acting Housing Division Manager
Carl Castillo, Policy Advisor

EXECUTIVE SUMMARY

The purpose of this agenda item is to respond to Council's request at the March 17, 2015 council meeting for the city attorney to bring back options to address concerns raised by mobile home owners in Boulder. At that meeting, several mobile home owners expressed concern that park management was engaged in potential violations of the Colorado Mobile Home Park Act. The residents sought city support to address their concerns. In addition, several residents spoke about their present inability to sell their mobile homes, because park owners refused to allow the sale of homes manufactured before the federal government adopted guidelines effective June 15, 1976. In addition, some owners expressed a concern that park owners would establish standards for mobile homes that they either could not meet or could not afford to meet. Staff has developed several options for Council's consideration and seeks direction about whether to move forward with any of the proposed options.

STAFF RECOMMENDATION

Staff recommends that Council direct through concurrence of at least five members whether staff should expend the resources necessary to implement any of the proposed options and if so, which options.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Mobile homes provide a relatively low cost option for affordable housing in Boulder. There is a debate over the relative value of mobile homes as compared with affordable attached housing.
- Environmental: Mobile homes provide lower income workers with local housing options, which may reduce the environmental impact associated with commuting.
- Social: The ability for lower income individuals to reside in Boulder provides important economic diversity.

OTHER IMPACTS

- Fiscal-Budgetary: The budget impact will depend upon the option chosen.
- Staff work necessary to implement the options will depend on the option chosen. For some options, other items may need to be delayed or removed from the work plan.

PUBLIC INPUT

At the March 3, 2015 and March 17, 2015 council meetings, several residents spoke about issues related to mobile homes. In addition, Council has received numerous emails from mobile home residents in Boulder.

BOARD AND COMMISSION INPUT

None.

BACKGROUND

There are five mobile home parks in the City of Boulder. These parks provide an affordable housing option for individuals and families of moderate means. The communities are among the most diverse in the City of Boulder.

Several homeowners have alleged that park owners have violated provisions of the Mobile Home Park Act. C.R.S. §§ 38-12-200.1 – 221. (**Attachment A**). The Mobile Home Park Act is a comprehensive state law regulating the relationship between park owners and home owners. It was originally adopted in 1991. In 2010, city staff worked with the city's legislative delegation to strengthen the act.

The city has no authority to enforce the Mobile Home Park Act. The city's authority is limited to enforcement of city ordinances, except where there is a specific delegation in

state law. The act does include a private right of action providing that “any home owner who owns a home in a mobile home park” can sue a park owner who violates any provision of the Mobile Home Park Act. C.R.S. § 38-12-220. This remedy is, of course, of limited utility to those without the wherewithal to retain an attorney.

There are several approaches that the city could take to increase the effectiveness of the Mobile Home Park Act. In the past, the city provided funds to retain an attorney to represent mobile home owners. This provided a form of legal assistance to this community.

Another approach would be for Council to adopt an ordinance enacting sections of the Mobile Home Park Act as part of the city code. This would give city staff the ability to enforce its provisions and make violations a city misdemeanor. Staffing would present challenges. As Council well knows, city enforcement staff is already facing a difficult workload. If this is an approach in which Council is interested, there would need to be an analysis of appropriate staffing to address issues under the act.

The question whether a mobile home owner should be permitted to sell a home built before June 15, 1976, raises more complicated questions.

The Mobile Home Park Act does not prohibit a park owner from refusing to allow the sale of an older mobile home. The only provision relating to sale is as follows:

The owner of a mobile home park or his agent shall not require payment of any type of selling fee or transfer fee by either a home owner in the park wishing to sell his mobile home to another party or by any party wishing to buy a mobile home from a home owner in the park as a condition of tenancy in a mobile home park for the prospective buyer. This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for services actually performed and agreed to in writing by the home owner. Nothing in this section shall be construed to affect the rent charged. The owner of a mobile home shall have the right to place a “for sale” sign on or in his mobile home. The size, placement, and character of such signs shall be subject to reasonable rules and regulations of the mobile home park.

C.R.S. § 38-12-211. This section does not provide any assistance to the owners of older mobile homes.

At least one resident has suggested that the city adopt an ordinance prohibiting a park owner from refusing to allow a homeowner to sell a mobile home. Connecticut has a state statute that could provide a good model:

No owner or operator of a mobile manufactured home park shall require a resident who owns a mobile manufactured home which is safe, sanitary

and in conformance with aesthetic standards to remove the home from the development at the time such mobile manufactured home is sold or a mortgage on such a home is foreclosed provided that the purchaser or foreclosing mortgagee shall assume and be bound by the rental agreement of the foreclosed mortgagor and shall be bound by the rules and regulations of the park.

C.G.S.A § 21-79(a)(**Attachment B**). It is not clear whether such an ordinance could withstand a legal challenge in Colorado, although the Connecticut statute has been upheld by the Connecticut Supreme Court.

In addition to the basic framework of the Connecticut statute, Council could consider additional provisions in such an ordinance. The city has an existing rental housing inspection program which includes a checklist for health safety issues. A city ordinance could provide that no park owner could refuse permission to sell if the mobile home had met the standard for rental housing within a specified period. (A copy of the rental licensing inspection checklist is **Attachment C**). Council also could consider whether to create a fund to provide low interest or no interest loans to homeowners to pay for the inspection and any repairs required to pass the inspection. Council could require repayment of the loan from the proceeds of any sale. Council also could consider whether to allow a park owner to deny the right to sell if the homeowner was told expressly at the time of purchase that the landowner had an absolute right to refuse to allow the sale of the home.

Finally, council could address the issue with park owners raising standards above a level that current owners could meet. One option would be to expand the proposed ordinance to preclude eviction of any tenant for non-compliance with standards if the mobile home was habitable. Council could tie the measure of habitability to the rental licensing inspection checklist.

Questions for Council

Staff has requests that Council consider the following questions and direct staff regarding next steps.

1. Does Council want staff to pursue any of the options discussed above?
2. Does Council want staff to propose the creation of a fund to retain legal counsel to assist with enforcement of the Mobile Home Park Act?
3. Does Council want staff to develop an ordinance incorporating portions of the Mobile Home Park Act into the Boulder Municipal Code?
 - a. If so, does Council want staff to include with such a proposal a budget for new staff to enforce the new ordinance?

4. Does Council want staff to develop an ordinance prohibiting a mobile home park owner from refusing permission to sell an existing unit that is habitable and safe?
 - a. If so, is the Connecticut model acceptable to Council?
 - b. Should safety be measured by compliance with the rental housing inspection checklist?
 - c. Should staff propose a fund to pay for inspections and repairs necessary to pass inspection?
 - d. Should the ordinance permit park owners to refuse permission to sell to a homeowner who was told at the time of purchase that the park owner retained the right to refuse the right to sell?
5. Does Council want staff to develop an ordinance limiting a mobile home park owner's ability to evict a resident based on a failure of a home to meet a standard?
 - a. Should the city establish a standard based on the rental licensing inspection checklist?

ATTACHMENTS

Attachment A – Mobile Home Park Act

Attachment B – Connecticut Statute

Attachment C – Rental Licensing Inspection Checklist

§ 38-12-200.1. Short title

This part 2 shall be known and may be cited as the “Mobile Home Park Act”.

§ 38-12-200.2. Legislative declaration

The general assembly hereby declares that the purpose of this part 2 is to establish the relationship between the owner of a mobile home park and the owner of a mobile home situated in such park.

§ 38-12-201. Application of part 2

- (1) This part 2 shall apply only to manufactured homes as defined in [section 42-1-102\(106\)\(b\), C.R.S.](#)
- (2) Repealed by Laws 1981, H.B.1524, § 10.

§ 38-12-201.3. Legislative declaration--increased availability of mobile home parks

The general assembly hereby finds and declares that mobile homes, manufactured housing, and factory-built housing are important and effective ways to meet Colorado’s affordable housing needs. The general assembly further finds and declares that, because of the unique aspects of mobile homes and mobile home park ownership, there is a need to protect mobile home owners from eviction with short notice so as to prevent mobile home owners from losing their shelter as well as any equity in their mobile homes. The general assembly encourages local governments to allow and protect mobile home parks in their jurisdictions and to enact plans to increase the number of mobile home parks in their jurisdictions. The general assembly further encourages local governments to provide incentives to mobile home park owners to attract additional mobile home parks and to increase the viability of current parks.

§ 38-12-201.5. Definitions

As used in this part 2, unless the context otherwise requires:

- (1) “Home owner” means any person or family of such person owning a mobile home that is subject to a tenancy in a mobile home park under a rental agreement.
- (1.5) “Management” or “landlord” means the owner or person responsible for operating and managing a mobile home park or an agent, employee, or representative authorized to act on said management’s behalf in connection with matters relating to tenancy in the park.
- (2) “Mobile home” means a single-family dwelling built on a permanent chassis designed for long-term residential occupancy and containing complete electrical, plumbing, and sanitary facilities and designed to be installed in a permanent or semipermanent manner with or without a permanent foundation, which is capable of being drawn over public highways as a unit, or in sections by special permit, or a manufactured home as defined in section 38-29-102(6) if the manufactured home is situated in a mobile home park.
- (3) “Mobile home park” or “park” means a parcel of land used for the continuous accommodation of five or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assignees. Mobile home park does not include mobile home subdivisions or property zoned for manufactured home subdivisions.
- (4) “Mobile home space”, “space”, “mobile home lot” or “lot” means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park.
- (5) “Premises” means a mobile home park and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas, and existing facilities held out for the use of home owners generally or the use of which is promised to the home owner.
- (6) “Rent” means any money or other consideration to be paid to the management for the right of use, possession, and occupation of the premises.
- (7) “Rental agreement” means an agreement, written or implied by law, between the management and the home owner establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement.
- (8) Repealed by Laws 1987, H.B.1171, § 15.

(9) "Tenancy" means the rights of a home owner to use a space or lot within a park on which to locate, maintain, and occupy a mobile home, lot improvements, and accessory structures for human habitation, including the use of services and facilities of the park.

§ 38-12-202.5. Action for termination

(1) The action for termination shall be commenced in the manner described in section 13-40-110, C.R.S. The property description shall be deemed legally sufficient and within the meaning of section 13-40-110, C.R.S., if it states:

- (a) The name of the landlord or the mobile home park;
- (b) The mailing address of the property;
- (c) The location or space number upon which the mobile home is situate; and
- (d) The county in which the mobile home is situate.

(2) Service of summons shall be as specified in section 13-40-112, C.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-112, C.R.S., if the summons is affixed to the main entrance of the mobile home.

(3) Jurisdiction of courts in cases of forcible entry, forcible detainer, or unlawful detainer shall be as specified in section 13-40-109, C.R.S. Trial on the issue of possession shall be timely as specified in section 13-40-114, C.R.S., with no delay allowed for the determination of other issues or claims which may be severed at the discretion of the trial court.

(4) After commencement of the action and before judgment, any person not already a party to the action who is discovered to have a property interest in the mobile home shall be allowed to enter into a stipulation with the landlord and be bound thereby.

§ 38-12-202. Tenancy--notice to quit

(1)(a) No tenancy or other lease or rental occupancy of space in a mobile home park shall commence without a written lease or rental agreement, and no tenancy in a mobile home park shall be terminated until a notice to quit has been served. Said notice to quit shall be in writing and in the form specified in section 13-40-107(2), C.R.S. The property description required in section 13-40-107(2), C.R.S., shall be deemed legally sufficient if it states:

- (I) The name of the landlord or the mobile home park;
- (II) The mailing address of the property;
- (III) The location or space number upon which the mobile home is situate; and
- (IV) The county in which the mobile home is situate.

(b) Service of the notice to quit shall be as specified in section 13-40-108, C.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-108, C.R.S., if the notice is affixed to the main entrance of the mobile home.

(c)(I) Except as otherwise provided in subparagraph (II) of this paragraph (c), the home owner shall be given a period of not less than sixty days to remove any mobile home from the premises from the date the notice is served or posted. In those situations where a mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord, then in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.

(II) If the tenancy is terminated on grounds specified in section 38-12-203(1)(f), the home owner shall be given a period of not less than ten days to remove any mobile home from the premises from the date the notice is served or posted.

(2) No lease shall contain any provision by which the home owner waives his or her rights under this part 2, and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void. In those situations where a mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.

(3) The landlord or management of a mobile home park shall specify, in the notice required by this section, the reason for the termination, as described in section 38-12-203, of any tenancy in such mobile home park. If the tenancy is being terminated based on the mobile home or mobile home lot being out of compliance with the rules and regulations adopted pursuant to section 38-12-203(1)(c), the notice required by this section shall include a statement advising the home owner that the home owner has a right to cure the noncompliance within thirty days of the date of service or posting of the notice to quit. The thirty-day period to cure any noncompliance set forth in this

subsection (3) shall run concurrently with the sixty-day period to remove a mobile home from the premises as set forth in paragraph (c) of subsection (1) and subsection (2) of this section. Acceptance of rent by the landlord or management of a mobile home park during the thirty-day right to cure period set forth in section 38-12-203(1)(c) shall not constitute a waiver of the landlord's right to terminate the tenancy for any noncompliance set forth in section 38-12-203(1)(c).

§ 38-12-203. Reasons for termination

(1) A tenancy shall be terminated pursuant to this part 2 only for one or more of the following reasons:

(a) Failure of the home owner to comply with local ordinances and state laws and regulations relating to mobile homes and mobile home lots;

(b) Conduct of the home owner, on the mobile home park premises, which constitutes an annoyance to other home owners or interference with park management;

(c) Failure of the home owner to comply with written rules and regulations of the mobile home park either established by the management in the rental agreement at the inception of the tenancy, amended subsequently thereto with the consent of the home owner, or amended subsequently thereto without the consent of the home owner on sixty days' written notice if the amended rules and regulations are reasonable; except that the home owner shall have thirty days from the date of service or posting of the notice to quit set forth in section 38-12-202(3) to cure any noncompliance on the mobile home or mobile home lot before an action for termination may be commenced, except if local ordinances, state laws and regulations, park rules and regulations, or emergency, health, or safety situations require immediate compliance. If a home owner was in violation or noncompliance pursuant to this paragraph (c) and was given notice and a right to cure such noncompliance and within a twelve-month period from the date of service of the notice is in noncompliance of the same rule or regulation and is given notice of the second noncompliance, there shall be no right to cure the second noncompliance. Regulations applicable to recreational facilities may be amended at the reasonable discretion of the management. For purposes of this paragraph (c), when the mobile home is owned by a person other than the owner of the mobile home park, the mobile home is a separate unit of ownership, and regulations that are adopted subsequent to the unit location in the park without the consent of the home owner and that place restrictions or requirements on that separate unit are prima facie unreasonable. Nothing in this paragraph (c) shall prohibit a mobile home park owner from requiring compliance with current park unit regulations at the time of sale or transfer of the mobile home to a new owner. Transfer under this paragraph (c) shall not include transfer to a co-owner pursuant to death or divorce or to a new co-owner pursuant to marriage.

(d)(I) Condemnation or change of use of the mobile home park. When the owner of a mobile home park is formally notified by a notice of intent to acquire pursuant to section 38-1-121(1) or other similar provision of law, or a complaint in a condemnation action from an appropriate governmental agency that the mobile home park, or any portion thereof, is to be acquired by the governmental agency or may be the subject of a condemnation proceeding, the landlord shall, within seventeen days, notify the home owners in writing of the terms of the notice of intent to acquire or complaint received by the landlord.

(II) In those cases where the landlord desires to change the use of the mobile home park and where such change of use would result in eviction of inhabited mobile homes, the landlord shall first give the owner of each mobile home subject to such eviction a written notice of the landlord's intent to evict not less than six months prior to such change of use of the land, notice to be mailed to each home owner.

(e) The making or causing to be made, with knowledge, of false or misleading statements on an application for tenancy;

(f) Conduct of the home owner or any lessee of the home owner or any guest, agent, invitee, or associate of the home owner or lessee of the home owner, that:

(I) Occurs on the mobile home park premises and unreasonably endangers the life of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(II) Occurs on the mobile home park premises and constitutes willful, wanton, or malicious damage to or destruction of property of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(III) Occurs on the mobile home park premises and constitutes a felony prohibited under article 3, 4, 6, 7, 9, 10, 12, or 18 of title 18, C.R.S.; or

(IV) Is the basis for a pending action to declare the mobile home or any of its contents a class 1 public nuisance under section 16-13-303, C.R.S.

(2) In an action pursuant to this part 2, the landlord shall have the burden of proving that the landlord complied with the relevant notice requirements and that the landlord provided the home owner with a statement of reasons for the termination. In addition to any other defenses a home owner may have, it shall be a defense that the landlord's allegations are false or that the reasons for termination are invalid.

§ 38-12-204. Nonpayment of rent--notice required for rent increase

(1) Any tenancy or other estate at will or lease in a mobile home park may be terminated upon the landlord's written notice to the home owner requiring, in the alternative, payment of rent or the removal of the home owner's unit from the premises, within a period of not less than five days after the date notice is served or posted, for failure to pay rent when due.

(2) Rent shall not be increased without sixty days' written notice to the home owner. In addition to the amount and the effective date of the rent increase, such written notice shall include the name, address, and telephone number of the mobile home park management, if such management is a principal owner, or owner of the mobile home park and, if the owner is other than a natural person, the name, address, and telephone number of the owner's chief executive officer or managing partner; except that such ownership information need not be given if it was disclosed in the rental agreement made pursuant to section 38-12-213.

§ 38-12-204.3. Notice required for termination

(1) Where the tenancy of a mobile home owner is being terminated under section 38-12-202 or section 38-12-204, the landlord or mobile home park owner shall provide such mobile home owner with written notice as provided for in subsection (2) of this section. Service of such notice shall occur at the same time and in the same manner as service of:

(a) The notice to quit as provided in section 38-12-202(1); or

(b) The notice of nonpayment of rent as provided in section 38-12-204(1).

(2) The notice required under this section shall be in at least ten-point type and shall read as follows:

IMPORTANT NOTICE TO THE HOME OWNER:

This notice and the accompanying notice to quit/notice of nonpayment of rent are the first steps in the eviction process. Any dispute you may have regarding the grounds for eviction should be addressed with your landlord or the management of the mobile home park or in the courts if an eviction action is filed. Please be advised that the "Mobile Home Park Act", part 2 of article 12 of title 38, Colorado Revised Statutes, may provide you with legal protection:

NOTICE TO QUIT: The landlord or management of a mobile home park must serve to a home owner a notice to quit in order to terminate a home owner's tenancy. The notice must be in writing and must contain certain information, including:

- The grounds for the termination of the tenancy;
- Whether or not the home owner has a right to cure under the "Mobile Home Park Act"; and
- That the home owner has a right to mediation pursuant to section 38-12-216, Colorado Revised Statutes, of the "Mobile Home Park Act".

NOTICE OF NONPAYMENT OF RENT: The landlord or management of a mobile home park must serve to a home owner a notice of nonpayment of rent in order to terminate a home owner's tenancy. The notice must be in writing and must require that the home owner either make payment of rent and any applicable fees due and owing or remove the owner's unit from the premises, within a period of not less than five days after the date the notice is served or posted, for failure to pay rent when due.

CURE PERIODS: If the home owner has a right to cure under the "Mobile Home Park Act", the landlord or management of a mobile home park cannot terminate a home owner's tenancy without first providing the home

owner with a time period to cure the noncompliance. "Cure" refers to a home owner remedying, fixing, or otherwise correcting the situation or problem that caused the tenancy to be terminated pursuant to sections 38-12-202, 38-12-203, or 38-12-204, Colorado Revised Statutes.

COMMENCEMENT OF LEGAL ACTION TO TERMINATE THE TENANCY: After the last day of the notice period, a legal action may be commenced to take possession of the space leased by the home owner. In order to evict a home owner, the landlord or management of the mobile home park must prove:

- The landlord or management complied with the notice requirements of the "Mobile Home Park Act";
- The landlord or management provided the home owner with a statement of reasons for termination of the tenancy; and
- The reasons for termination of the tenancy are true and valid under the "Mobile Home Park Act".

A home owner must appear in court to defend against an eviction action. If the court rules in favor of the landlord or management of the mobile home park, the home owner will have not less than 48 hours from the time of the ruling to remove the mobile home and to vacate the premises. If a tenancy is being terminated pursuant to section 38-12-203(1)(f), Colorado Revised Statutes, the home owner shall have not less than 48 hours from the time of the ruling to remove the home and vacate the premises. In all other circumstances, if the home owner wishes to extend such period beyond 48 hours but not more than thirty days from the date of the ruling, the home owner shall prepay to the landlord an amount equal to any total amount declared by the court to be due to the landlord, as well as a pro rata share of rent for each day following the court's ruling that the mobile home owner will remain on the premises. All prepayments shall be paid by certified check, by cashier's check, or by wire transfer and shall be paid no later than 48 hours after the court ruling.

§ 38-12-205. Termination prohibited

A tenancy or other estate at will or lease in a mobile home park may not be terminated solely for the purpose of making the home owner's space in the park available for another mobile home or trailer coach.

§ 38-12-206. Home owner meetings--assembly in common areas

Home owners shall have the right to meet and establish a homeowners' association. Meetings of home owners or the homeowners' association relating to mobile home living and affairs in their park common area, community hall, or recreation hall, if such a facility or similar facility exists, shall not be subject to prohibition by the park management if the common area or hall is reserved according to the park rules and such meetings are held at reasonable hours and when the facility is not otherwise in use; except that no such meetings shall be held in the streets or thoroughfares of the mobile home park.

§ 38-12-207. Security deposits--legal process

- (1) The owner of a mobile home park or his agents may charge a security deposit not greater than the amount of one month's rent or two month's rent for multiwide units.
- (2) Legal process, other than eviction, shall be used for the collection of utility charges and incidental service charges other than those provided by the rental agreement.

§ 38-12-208. Remedies

(1)(a) Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall immediately issue a writ of restitution which the landlord shall take to the sheriff. In addition, if a money judgment has been requested in the complaint and if service was accomplished by personal service, the court shall determine and enter judgment for any amounts due to the landlord and shall calculate a pro rata daily rent amount that must be paid for the home to remain in the park. The court may rely upon information provided by the landlord or the landlord's attorney when determining the pro rata daily rent amount to be paid by the home owner. Upon receipt of

the writ of restitution, the sheriff shall serve notice in accordance with the requirements of section 13-40-108, C.R.S., to the home owner of the court's decision and entry of judgment.

(b) The notice of judgment shall state that, at a specified time not less than forty-eight hours from the entry of judgment if a tenancy is being terminated pursuant to section 38-12-203(1)(f) and, in all other instances, not less than forty-eight hours from the entry of judgment, which may be extended to not more than thirty days after the entry of judgment if the home owner has prepaid by certified check, by cashier's check, or by wire transfer no later than forty-eight hours after the court ruling to the landlord an amount equal to any total amount declared by the court to be due to the landlord, as well as a pro rata share of rent for each day following the court's ruling that the mobile home owner will remain on the premises, the sheriff will return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires, and otherwise making the mobile home safe and ready for highway travel.

(c) Should the home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may, by written agreement, extend the time for the execution of the writ of restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.

(d) If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, then the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in such event shall be limited to gross negligence or willful and wanton disregard of the property rights of the home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home; except that the landlord may take appropriate action to prevent freezing, to prevent wind and weather damage, and to prevent damage caused by vandals.

(e) Reasonable removal and storage charges and the costs associated with preventing damage caused by wind, weather, or vandals can be paid by any party in interest. Those charges will run with the mobile home, and whoever ultimately claims the mobile home will owe that sum to the person who paid it.

(2)(a) Prior to the issuance of said writ of restitution, the court shall make a finding of fact based upon evidence or statements of counsel that there is or is not a security agreement on the mobile home being subjected to the writ of restitution. A written statement on the mobile home owner's application for tenancy with the landlord that there is no security agreement on the mobile home shall be prima facie evidence of the nonexistence of such security agreement.

(b) In those cases where the court finds there is a security agreement on the mobile home subject to the writ of restitution and where that holder of the security agreement can be identified with reasonable certainty, then, upon receipt of the writ of restitution, the plaintiff shall promptly inform the holder of such security agreement as to the location of the mobile home, the name of the landlord who obtained the writ of restitution, and the time when the mobile home will be subject to removal by the sheriff and the landlord.

(3) The remedies provided in part 1 of this article and article 40 of title 13, C.R.S., except as inconsistent with this part 2, shall be applicable to this part 2.

§ 38-12-209. Entry fees prohibited--entry fee defined--security deposit--court costs

(1) The owner of a mobile home park, or the agent of such owner, shall neither pay to nor receive from an owner or a seller of a mobile home an entry fee of any type as a condition of tenancy in a mobile home park.

(2) As used in this section, "entry fee" means any fee paid to or received from an owner of a mobile home park or his agent except for:

(a) Rent;

(b) A security deposit against actual damages to the premises or to secure rental payments, which deposit shall not be greater than the amount allowed under this part 2. Subsequent to July 1, 1979, security deposits will remain the

property of the home owner, and they shall be deposited into a separate trust account by the landlord to be administered by the landlord as a private trustee. For the purpose of preserving the corpus, the landlord will not commingle the trust funds with other money, but he is permitted to keep the interest and profits thereon as his compensation for administering the trust account.

(c) Fees charged by any state, county, town, or city governmental agency;

(d) Utilities;

(e) Incidental reasonable charges for services actually performed by the mobile home park owner or his agent and agreed to in writing by the home owner.

(3) The trial judge may award court costs and attorney fees in any court action brought pursuant to any provision of this part 2 to the prevailing party upon finding that the prevailing party undertook the court action and legal representation for a legally sufficient reason and not for a dilatory or unfounded cause.

(4) The management or the resident may bring a civil action for violation of the rental agreement or any provision of this part 2 in the appropriate court of the county in which the park is located. Either party may recover actual damages or, the court may in its discretion award such equitable relief as it deems necessary, including the enjoining of either party from further violations.

§ 38-12-210. Closed parks prohibited

(1) The owner of a mobile home park or his agent shall not require as a condition of tenancy in a mobile home park that the prospective home owner has purchased a mobile home from any particular seller or from any one of a particular group of sellers.

(2) Such owner or agent shall not give any special preference in renting to a prospective home owner who has purchased a mobile home from a particular seller.

(3) A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

(4) The owner or operator of a mobile home park shall treat all persons equally in renting or leasing available space. Notwithstanding the foregoing, nothing in this subsection (4) shall be construed to preclude owners and operators of mobile home parks from providing housing for older persons as defined in section 24-34-502(7)(b), C.R.S.

§ 38-12-211. Selling fees prohibited

The owner of a mobile home park or his agent shall not require payment of any type of selling fee or transfer fee by either a home owner in the park wishing to sell his mobile home to another party or by any party wishing to buy a mobile home from a home owner in the park as a condition of tenancy in a mobile home park for the prospective buyer. This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for services actually performed and agreed to in writing by the home owner. Nothing in this section shall be construed to affect the rent charged. The owner of a mobile home shall have the right to place a "for sale" sign on or in his mobile home. The size, placement, and character of such signs shall be subject to reasonable rules and regulations of the mobile home park.

§ 38-12-212. Certain types of landlord-seller agreements prohibited

A seller of mobile homes shall not pay or offer cash or other consideration to the owner of a mobile home park or his agent for the purpose of reserving spaces or otherwise inducing acceptance of one or more mobile homes in a mobile home park.

§ 38-12-212.3. Responsibilities of landlord--acts prohibited

(1)(a) Except as otherwise provided in this section, a landlord shall be responsible for and pay the cost of the maintenance and repair of:

(I) Any sewer lines, water lines, utility service lines, or related connections owned and provided by the landlord to the utility pedestal or pad space for a mobile home sited in the park; and

(II) Any accessory buildings or structures, including, but not limited to, sheds and carports, owned by the landlord and provided for the use of the residents; and

(III) The premises as defined in section 38-12-201.5(5).

(b) Any landlord who fails to maintain or repair the items delineated in paragraph (a) of this subsection (1) shall be responsible for and pay the cost of repairing any damage to a mobile home which results from such failure. The landlord shall ensure that all plumbing lines and connections owned and provided by the landlord to the utility pedestal or pad space for each mobile home in the mobile home park have plumbing that conformed to applicable law in effect at the time the plumbing was installed and that is maintained in good working order and running water and reasonable amounts of water at all times furnished to the utility pedestal or pad space and shall ensure that each pad space is connected to a sewage disposal system approved under applicable law; except that these conditions need not be met if:

(I) A mobile home is individually metered and the tenant occupying the mobile home fails to pay for water services;

(II) The local government in which the mobile home park is situated shuts off water service to a mobile home for any reason;

(III) Weather conditions present a likelihood that water pipes will freeze, water pipes to a mobile home are wrapped in heated pipe tape, and the utility company has shut off electrical service to a mobile home for any reason or the heat tape malfunctions for any reason; or

(IV) Running water is not available for any other reason outside the landlord's control.

(c) The landlord shall give a minimum of two days' notice to a mobile home owner if the water service will be disrupted for planned maintenance. The landlord shall attempt to give a reasonable amount of notice to home owners if water service is to be disrupted for any other reasons unless conditions are such that providing the notice would result in property damage, health, or safety concerns or when conditions otherwise require emergency repair.

(2) No landlord shall require a resident to assume the responsibilities outlined in subsection (1) of this section as a condition of tenancy in the mobile home park.

(3) Nothing in this section shall be construed as:

(a) Limiting the liability of a resident for the cost of repairing any damage caused by such resident to the landlord's property or other property located in the park; or

(b) Restricting a landlord or his agent or a property manager from requiring a resident to comply with reasonable rules and regulations or terms of the rental agreement and any covenants binding upon the landlord or resident, including covenants running with the land which pertain to the cleanliness of such resident's lot and routine lawn and yard maintenance, exclusive of major landscaping projects.

§ 38-12-212.7. Landlord utilities account

(1) Whenever a landlord contracts with a utility for service to be provided to a resident, the usage of which is to be measured by a master meter or other composite measurement device, such landlord shall remit to the utility all moneys collected from each resident as payment for the resident's share of the charges for such utility service within forty-five days of the landlord's receipt of payment.

(2) If a landlord fails to timely remit utility moneys collected from residents as required by subsection (1) of this section, such utility may, after written demand therefor is served upon the landlord, require the landlord to deposit an amount equal to the average daily charge for the usage of such utility service for the preceding twelve months multiplied by the sum of ninety.

(3) Any utility which prevails in an action brought to enforce the provisions of this section shall be entitled to an award of its reasonable attorney fees and court costs.

§ 38-12-213. Rental agreement--disclosure of terms in writing

(1) The terms and conditions of a tenancy must be adequately disclosed in writing in a rental agreement by the management to any prospective home owner prior to the rental or occupancy of a mobile home space or lot. Said disclosures shall include:

(a) The term of the tenancy and the amount of rent therefor, subject to the requirements of subsection (4) of this section;

(b) The day rental payment is due and payable;

(c) The day when unpaid rent shall be considered in default;

(d) The rules and regulations of the park then in effect;

(e) The name and mailing address where a manager's decision can be appealed;

- (f) All charges to the home owner other than rent.
- (2) Said rental agreement shall be signed by both the management and the home owner, and each party shall receive a copy thereof.
- (3) The management and the home owner may include in a rental agreement terms and conditions not prohibited by this part 2.
- (4) The terms of tenancy shall be specified in a written rental agreement subject to the following conditions:
 - (a) The standard rental agreement shall be for a month-to-month tenancy.
 - (b) Upon written request by the home owner to the landlord, the landlord shall allow a rental agreement for a fixed tenancy of not less than one year if the home owner is current on all rent payments and is not in violation of the terms of the then-current rental agreement; except that an initial rental agreement for a fixed tenancy may be for less than one year in order to ensure conformity with a standard anniversary date. A landlord shall not evict or otherwise penalize a home owner for requesting a rental agreement for a fixed period.
 - (c) A landlord may, in the landlord's discretion, allow a lease for a fixed period of longer than one year. In such circumstances, the requirements of paragraphs (a) and (b) of this subsection (4) shall not apply.

§ 38-12-214. Rules and regulations

- (1) The management shall adopt written rules and regulations concerning all home owners' use and occupancy of the premises. Such rules and regulations are enforceable against a home owner only if:
 - (a) Their purpose is to promote the convenience, safety, or welfare of the home owners, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities held out for the home owners generally;
 - (b) They are reasonably related to the purpose for which they are adopted;
 - (c) They are not retaliatory or discriminatory in nature;
 - (d) They are sufficiently explicit in prohibition, direction, or limitation of the home owner's conduct to fairly inform him of what he must or must not do to comply.

§ 38-12-215. New developments and parks--rental of sites to dealers authorized

- (1) The management of a new mobile home park or manufactured housing community development may require as a condition of leasing a mobile home site or manufactured home site for the first time such site is offered for lease that the prospective lessee has purchased a mobile home or manufactured home from a particular seller or from any one of a particular group of sellers.
- (2) A licensed mobile home dealer or a manufactured home dealer may, by contract with the management of a new mobile home park or manufactured housing community development, be granted the exclusive right to first-time rental of one or more mobile home sites or manufactured home sites.

§ 38-12-216. Mediation, when permitted--court actions

- (1) In any controversy between the management and a home owner of a mobile home park arising out of the provisions of this part 2, except for the nonpayment of rent or in cases in which the health or safety of other home owners is in imminent danger, such controversy may be submitted to mediation by either party prior to the filing of a forcible entry and detainer lawsuit upon agreement of the parties.
- (2) The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process at any time without prejudice.
- (3) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

§ 38-12-217. Notice of sale of mobile home park--notice of change in use

- (1)(a) The mobile home park owner shall notify the owners of all mobile homes in the park and the municipality in which the park is situated or, if none, the county in which the park is situated of his or her intent to change the use of the land comprising the park or to sell the park pursuant to paragraph (b) or (c) of this subsection (1), as applicable.
- (b) If the mobile home park owner intends to sell the park, the notification shall be made only once for any particular contract to sell or trade and shall be by written notice mailed to each mobile home owner at the address shown on the rental agreement with the mobile home park owner at least ten days prior to the first scheduled closing

for the sale or trade.

(c) If the mobile home park owner intends to change the use of the land comprising the mobile home park, the mobile home park owner shall give written notice to each mobile home owner at least one hundred eighty days before the change in use will occur. The mobile home park owner shall mail the written notice to each mobile home owner at the address shown on the rental agreement with the mobile home park owner.

(2) The provisions of paragraph (b) of subsection (1) of this section shall not apply to the sale of a mobile home park when such sale occurs between members of an immediate family, related business entities, members and managers of a limited liability company, shareholders, officers, and directors in a corporation, trustees and beneficiaries of a trust, or partners and limited liability partners in a partnership or limited liability partnership; except that such purchasers shall not change the use of the land comprising the mobile home park without complying with the notice provisions of this section. For purposes of this section, "immediate family" means persons related by blood or adoption.

§ 38-12-218. Mobile home owners--right to form a cooperative

One or more members of a homeowners' association may, at any time, form a cooperative for the purposes of offering to purchase or finance a mobile home park. A home owner shall be a member of the homeowners' association in order to participate in the cooperative, and participation in the cooperative shall be voluntary.

§ 38-12-219. Home owners' and landlords' rights

(1) Every home owner and landlord shall have the right to the following:

- (a) Protection from abuse or disregard of state or local law by the landlord and home owners;
- (b) Peaceful enjoyment of the home owner's mobile home space, free from unreasonable, arbitrary, or capricious rules and enforcement thereof; and
- (c) Tenancy free from harassment or frivolous lawsuits by the landlord and homeowners.

§ 38-12-220. Private civil right of action

Any home owner who owns a home in a mobile home park where the landlord has violated any provision of this article shall have a private civil right of action against the landlord. In any such action, the home owner shall be entitled to actual economic damages and reasonable attorney fees and costs if the home owner is successful in the action.

§ 38-12-221. Access by counties and municipalities

Notwithstanding any other provision of law, upon a finding that the utilities in a park create a significant health or safety danger to park residents, the landlord of a mobile home park shall grant county or municipal officers or employees access to the mobile home park for the purposes of investigating or conducting a study related to such danger.

§ 21-79. Owner prohibited from restricting resident's right to sell, CT ST § 21-79

Connecticut General Statutes Annotated
Title 21. Licenses
Chapter 412. Mobile Manufactured Homes and Mobile Manufactured Home Parks. Park Owners and Residents (Refs & Annos)

C.G.S.A. § 21-79

§ 21-79. Owner prohibited from restricting resident's right to sell

Currentness

(a) No owner or operator of a mobile manufactured home park shall require a resident who owns a mobile manufactured home which is safe, sanitary and in conformance with aesthetic standards to remove the home from the development at the time such mobile manufactured home is sold or a mortgage on such a home is foreclosed provided that the purchaser or foreclosing mortgagee shall assume and be bound by the rental agreement of the foreclosed mortgagor and shall be bound by the rules and regulations of the park.

(b) A mobile manufactured home shall be presumed to be safe and sanitary if it is established that the mobile manufactured home was constructed in accordance with any nationally recognized building or construction code or standard. Failure to meet any such standard or the provisions of any such code shall not automatically raise a presumption that the mobile manufactured home is unsafe or unsanitary. Such failure shall not be used as a reason for withholding approval of an on-site sale unless such failure renders the mobile manufactured home unsafe or unsanitary.

(c) The owner of a mobile manufactured home park shall bear the burden of showing that a mobile manufactured home is unsafe, unsanitary, or fails to meet the aesthetic standards of the development. No aesthetic standard concerning those physical characteristics such as size, original color or original building materials, which cannot be changed without undue financial hardship to the resident, shall be applied against a mobile manufactured home.

(d) Any purchaser of a mobile manufactured home sold by a resident may become a resident of the mobile manufactured home park provided he meets the entry requirements for said park and such requirements are equally applied by the owner to all purchasers and prospective residents and the owner approves such entry. Such approval may not be withheld except for good cause. For the purposes of this section good cause means a reasonable cause for the owner to believe (1) that such purchaser intends to utilize the purchased mobile manufactured home for an illegal or immoral purpose or for any purpose that would disturb the quiet enjoyment of the other residents of the park or (2) that the purchaser is or will be financially unable to pay the rent for the space or lot upon which the purchased mobile manufactured home is located. If the owner denies approval to a purchaser, he shall, in writing, state any reason for such disapproval. Such statement shall be delivered to the resident and the purchaser or prospective resident within ten days after the owner receives the completed application of the purchaser or prospective resident. Failure to deliver such notification within ten days shall be deemed to be approval.

(e) Any resident wishing to sell his or her home shall request a written statement of the owner's intentions regarding the condition of the home. Within twenty days after receipt of such a request, the owner shall approve the home's condition for

§ 21-79. Owner prohibited from restricting resident's right to sell, CT ST § 21-79

resale or deliver a written statement to the resident specifying the reasons why the home is not safe, sanitary, or in conformance with aesthetic standards. Failure of the owner to respond within twenty days shall be deemed to be an approval of the home's condition for resale. If the resident disputes the owner's response, he may seek a declaratory ruling from the Department of Consumer Protection. The resident may attempt to correct defects identified by the owner and may again request the owner's approval of the home's condition for resale. If the resident again disputes the owner's response, he may once again seek a declaratory ruling from the department. An owner's statement of approval shall remain in force for not more than six months. No owner shall exact a commission or fee with respect to the price realized by the seller, unless he has acted as agent for the seller in a sale pursuant to a written contract, or charge a rent for the mobile manufactured home space or lot upon which the purchased mobile manufactured home is located greater than the prevailing rent for any other space or lot located in the park.

Credits

(1974, P.A. 74-333, § 4, eff. May 30, 1974; 1976, P.A. 76-143, § 3, eff. Oct. 1, 1976; 1979, P.A. 79-237; 1981, P.A. 81-322, § 5; 1983, P.A. 83-389, § 5; 1983, June Sp.Sess., P.A. 83-3, § 13, eff. Oct. 1, 1983; 2003, June 30 Sp.Sess., P.A. 03-6, § 146, eff. July 1, 2004; 2004, P.A. 04-169, § 17, eff. June 1, 2004; 2004, P.A. 04-189, § 1, eff. June 1, 2004.)

[Notes of Decisions \(12\)](#)

C. G. S. A. § 21-79, CT ST § 21-79

Current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2015.

End of Document

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Baseline Inspection Checklist

Includes All Single and Multi-Unit Rental Properties

Effective January 2011

Rental Property Address: _____ Unit # _____

The Baseline Inspection Checklist and the Baseline Inspection Compliance Verification Forms are required to be completed and signed by the appropriate City of Boulder licensed inspector(s) and the owner/operator and returned to:

Planning and Development Services
c/o Rental Licensing Program
1739 Broadway, Third Floor
P. O. Box 791
Boulder, Colorado 80306

During all inspections, a property owner, tenant or agent must be present. The inspector(s) will do a visual inspection for compliance with this checklist based on the Boulder Property Maintenance Code [Boulder Revised Code 1981, Chapter 10-2]. Each inspection is only a visual examination of those elements and areas that are safely and readily accessible at the time of the inspection.

The licensed inspector(s) is/are not responsible for compliance with the city's property maintenance code either at the time of inspection or anytime thereafter. Compliance with the city property maintenance code is the responsibility of the owner. The owner must also verify that the smoke and carbon monoxide alarms are functioning properly and that a contract is signed for trash removal from the site and certify these actions by signing the attached Compliance Verification Form (page 13).

Existing structures and premises that comply with all applicable codes in place at the time of construction will be deemed to comply with this code except where the code official determines that the deviations from this code pose a danger to health, safety or welfare of the public or occupants and issues an order for the owner to correct those specific conditions or alterations (B.R.C. 1981, 10-2 Section 102.2, "Maintenance").

Please note the following:

- ▶ Common areas of condominium complexes that provide access to individual units and are subject to homeowner association control may require life-safety issues to be addressed for individual units to obtain a rental license.

- ▶ All items listed on the following pages must be inspected. An inspector must inspect each item or indicate not applicable (N/A) where such requirement does not apply. All outstanding safety issues must be corrected and verified by the inspector.

A. General Requirements: Light, Ventilation, and Occupancy Limitations

Section I – V License Qualifications:

City of Boulder licensed D-9, OR

General A, B or C Contractor, OR

Colorado Licensed Design Professional, OR

ICC Certified Combination Inspector.

I. Exterior Structure

1. General. The exterior of a structure shall be maintained so as not to pose a threat to public health, safety or welfare. (IPMC 304.1.1, 1-13)

2. Floodplain safety signage. Structures located in a 100-year floodplain shall be posted with a warning sign that states: "This property is located in an area that is subject to sudden and severe flooding. In case of flood emergency be prepared to seek high ground immediately." For information visit www.boulderfloodinfo.net.

The sign shall be a metal plaque with minimum ¼" letters in a contrasting color attached to the structure with non-removable fasteners posted on the exterior of the building at the entrance. (IPMC 310; 9-3-3 (a) (10), B.R.C. 1981)

Note: The rental license inspector is responsible for informing the owner or operator if their unit is located in a designated floodplain requiring the safety signage.

3. Address numbers. Numbers are plainly visible from the street. (IPMC 304.3)

4. Structural members. All visible structural members appear to be properly installed and functioning as intended. (IPMC 304.4)

5. Foundation walls. All foundation walls shall be free from open cracks and breaks which compromise wall integrity and shall be maintained so as to prevent the entry of rodents and other pests. (IPMC 304.5)

6. Roofs. The roof shall be sound, tight and not have defects that admit rain in order to prevent dampness or deterioration in the walls or interior portion of the structure. (IPMC 304.7)

7. Window, skylight and door frames. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight. All glazing shall be maintained free from loose and broken glass. (IPMC 304.13, 30413.1)

8. Exterior handrails and guards. Safely maintained. (IPMC 304.12)

9. Stairs, decks, porches and balconies. Safely maintained. (IPMC 304.10)

II. Interior Structure

1. General. The interior and equipment therein shall be maintained in good repair, and in sanitary condition. (IPMC 305.1)

2. Maintenance. Equipment, systems, devices and safeguards required by the code in effect when the structure or premises was constructed, altered or repaired shall be maintained in good working order. (IPMC 101.3)

3. Structural members. All visible interior structural members appear to be properly installed and functioning as intended. (IPMC 305.2)

4. Interior handrails and guards. Safely maintained. (IPMC 305.5)

5. Interior stairs, decks, porches and balconies. Safely maintained. (IPMC 305.4)

III. Light

1. Habitable spaces. Every habitable space shall have at least one window of approved size (as required by the code in effect when the structure was built) facing directly to the outdoors or to a court, or shall be provided with artificial light in accordance with IBC 1205.3. (IPMC 402.1)

2. Common halls and stairways. Every common hall and stairway in residential occupancies, other than one-and two-family dwellings, shall be illuminated at all times with at least 765 lumens (60 watt incandescent or 14 watt cfl) for each 200 square feet of floor area, provided spacing between lights does not exceed 30 feet. (IPMC 402.2).

IV. Ventilation

1. Habitable spaces. Every habitable space shall have at least one openable window or mechanical ventilation. (IPMC 403.1)

2. Bathrooms and toilet rooms. An openable window or mechanical ventilation must be provided. (IPMC 403.2)

V. Occupancy Limitations

1. Water closet accessibility. Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom. Every bedroom in a

dwelling unit shall have access to at least one water closet and lavatory located in the same story as the bedroom or an adjacent story. (IPMC 404.4.3)

2. Prohibited occupancy. Kitchens and non-habitable spaces shall not be used for sleeping rooms. (IPMC 404.4.4)

3. Food preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage. (IPMC 404.7)

4. Dwelling units. Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory (502.1)

5. Rooming houses. At least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units (502.2)

B. Plumbing Facilities and Fixture Requirements

Section I –III License Qualifications:

- City of Boulder licensed D-9 or General A, B or C Contractor, OR
- City of Boulder Licensed Plumber, OR
- Colorado Licensed Design Professional, OR
- ICC Certified Combination Inspector

I. Toilet Rooms

1. Privacy. Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared bathrooms and toilet rooms in a multiple dwelling (503.1)

2. Location. Toilet rooms and bathrooms serving rooming units or housekeeping units shall have access from a common hall or passageway (503.2)

II. Plumbing Systems and Fixtures

1. General. All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a

safe, sanitary and functional condition. (IPMC 504.1)

2. Fixture clearance. Plumbing fixtures shall have adequate clearances for usage and cleaning. (IPMC 504.2)

III. Water Systems

1. General. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the International Plumbing Code. (IPMC 505.1)

C. Mechanical and Electrical Requirements

Sections I – III License Qualifications:

- City of Boulder licensed Mechanical A, B or C contractor, OR
- Colorado Licensed Design Professional, OR
- ICC Certified Electrical or Combination Inspector, OR
- Qualified Xcel service personnel

Section IV License Qualifications:

- City of Boulder Electrician’s license, OR
- Colorado Licensed Design Professional, OR
- ICC Certified Electrical or Combination Inspector, OR
- ASHI or NAHI Certified Inspector

I. General Mechanical Requirements

Note: Electric baseboard heating systems are exempt from heating system tune-up requirements. If applicable, submit this form and clearly state “All Electric Heating.”

1. Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heaters shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function. (IPMC 603.1)

2. Fireplaces and kitchen appliances. Checked for safe installation. (IFGC 503, 504, 602.2, 604, 605, 623; IMC Chapter 8, 902-905, 917)

3. Clothes dryer exhaust systems. Shall be independent of all other systems and shall be exhausted outside the structure in accordance with the manufacturer’s instructions. (IPMC 403.5)

Exception 1. Approved condensing (ductless) clothes dryers.

Exception 2. For electric clothes dryers, an approved commercially manufactured lint containment system within the appliance space and accessible for maintenance.

4. Heating Facilities. Every dwelling unit must be

Attachment C - Rental Licensing Inspection Checklist

equipped with heating facilities capable of safely and adequately heating all habitable rooms and bathrooms to 68 degrees (measured at a location two feet away from walls and three feet above the floor). (IMC 309)

5. Gas Piping Materials. Verify use of approved materials for gas piping. Non-complying gas pipe must be replaced with approved materials. (IFGC 403 & 406.1)

Gas Leaks: Where any gas leak is detected the inspector may shut off the gas at the appropriate location. The owner or operator of the facility must be contacted immediately. (IFGC 108.7)

6. Shutoff valves. The appliance gas shutoff valve must be accessible, in the same room and not further than six feet from the appliance. (IFGC 409.5)

7. Furnace Location. Gas fired furnaces accessed through bedrooms and bathrooms and not otherwise approved for those locations shall be provided with a solid weather-stripped door equipped with a self-closing device. All combustion air shall be taken from outside the building, and ducted to the room containing the furnace. (IFGC 303.3 & 304.6)

8. Venting. Appliance vents, connectors and draft diverters must be in sound condition, be of approved material, securely in place and free of obstructions and combustible deposits. The appliance venting system shall meet the draft requirements for the appliance in accordance with the manufacturer's instructions. (IFGC 501.15.2, 503.3.1, 503.12 & 801.2) Secure and replace as necessary.

9. Combustion Air. Verify adequate combustion air is provided for fuel burning appliances in mechanical rooms and enclosures. (IFGC 304.5-304.9) Correct combustion air supply as necessary.

10. Clearances. All single wall vent connectors for appliances shall maintain a minimum of six inches of clearance from combustibles. All B-vents serving appliances shall maintain a minimum of one inch of clearance from combustibles. Sufficient clearance must be maintained for cleaning and replacement of appliances (IFGC 306, 503.10.1-503.10.16) Correct clearance deficiencies.

11. Piping identification. Gas piping from multiple gas meter installations shall be marked with permanent identification so that the piping system supplied by each meter is readily identifiable. Each meter shall have a separate shutoff valve. (IFGC 401.7)

12. Service requirement. Conduct or verify service of all fuel burning appliances at time of inspection to include:

Clean combustible materials, dust and dirt in and around appliance, blower, motor, burners and controls.

Lubricate and adjustment of moving parts as needed.

Clean or replace of all filters (cleaning/replacement must occur as required by the appliance manufacturer).

Check all limit switches and replace if necessary.

Perform carbon monoxide testing of fuel-burning appliances with commercial testing instrument in accordance with testing instrument manufacturer's operating instructions and correct safety issues revealed by testing.

Check to assure heat exchangers are sound.

II. Boilers: Boilers serving six or more dwelling units must maintain a valid certificate of inspection from the State of Colorado.

Exception: Hot water supply storage tanks, including those designed for space heating, domestic or sanitary purposes, that are not recirculating and not exceeding a heat input of 200,000 Btu/hour, a water temperature of 210 F and a capacity of 120 gallons or less.

Note: the cert. may be an annual or biennial certificate depending on the type of boiler (CRS 9-4-101-18 & ANSI/NB-23)

III. Water Heaters

1. Access through bathrooms and bedrooms. Water heaters accessed through bathrooms and bedrooms and not otherwise approved for those locations shall be provided with a solid weather-stripped door equipped with a self-closing device. All combustion air shall be taken from outside the building, and ducted to the room. (IFGC 303.3)

2. Required features. Water heaters must have a temperature and pressure relief valve, discharge piping a maximum of six inches above floor or waste receptor, an accessible shut-off valve and safety pilot assembly. (IPC 504)

IV. General Electrical Equipment

1. Installation. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner. (IPMC 605.1)

2. Electrical faceplates. Sound and maintained in place. (IPMC 604.3)

3. Extension cords. Not to be used for permanent wiring where run through holes in walls, structural ceilings, suspended ceilings, dropped ceilings, floors, through doorways, windows, or similar openings. (IPMC 605.5)

4. Electrical circuits. Each occupant shall have ready access to all circuit breakers protecting the conductors supplying that occupancy. [NEC sec.240.24 (B)] Exception: Rental housing units constructed or converted to rental housing units and licensed prior to Dec. 7, 1971.

5. Electrical panelboards. Panelboard covers shall be removed and panelboards inspected to verify safety of all wiring, grounding, breakers and fuses as detailed in the National Electrical Code. (NEC chapters 1-4)

6. Receptacles. Every habitable space in a dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection. (IPMC 605.2)

7. Non-grounding-type electrical receptacles (two-prong receptacles). Where attachment to an equipment grounding conductor (two-wire circuits) does not exist in the receptacle enclosure, the installation shall comply with a, b or c below.

Two-prong receptacle shall be permitted to be replaced with another two-prong receptacle.

A two-prong receptacle shall be permitted to be replaced with a ground-fault circuit interrupter type (GFCI) three-prong receptacle. These receptacles shall be marked “No Equipment Ground.” An equipment grounding conductor shall not be connected from the GFCI-type receptacle to any outlet supplied from the GFCI-type receptacle.

A two-prong receptacle shall be permitted to be replaced with a three-prong, grounding-type receptacle where supplied through a GFCI device. Three-prong, grounding-type receptacles, supplied through the GFCI shall be marked “GFCI Protected” and “No Equipment Ground.” An equipment grounding conductor shall not be connected between the grounding-type receptacles.

8. Luminaires. Every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room and furnace room shall contain at least one electric luminaire (light fixtures). (IPMC 605.3)

D. Fire Safety Requirements

Section I – III License Qualifications:

City of Boulder licensed D-9 or General A, B or C contractor, OR

Colorado Licensed Design Professional, OR

ICC Certified Combination Inspector

I. General

1. General. A safe continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code. (IPMC 702.1)

2. Locked doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code. (IPMC 702.3)

3. Emergency escape openings. Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening. (IPMC 702.4)

4. Fire Resistance-rated assemblies. The required fire-resistance rating of fire-resistance rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained. (IPMC 703.1)

5. Barbeque safety. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or within 10 feet of combustible construction. (IFC 308)

Exception 1: One-and two-family dwellings.

Exception 2: Where buildings, balconies and decks are protected by an automatic sprinkler system.

Exception 3: LP-gas cooking devices having an LP-gas container with a water capacity not greater than 2½ pounds (nominal 1lb. LP-gas capacity).

Attachment C - Rental Licensing Inspection Checklist

6. Portable fire extinguishers. Portable fire extinguishers shall be installed in structures containing three or more rental units with interior corridors and/or common areas as detailed below. (IFC 906)

Install fire extinguisher where access is not obstructed or obscured from view.

Install fire extinguisher with mounting bracket provided by manufacturer.

Fire extinguisher installed in a cabinet shall not be locked unless subject to malicious use or damage.

Provide means for ready access for fire extinguisher locked in a cabinet.

The minimum rating for a fire extinguisher is 2-A. A fire extinguisher is required on each floor level.

The maximum travel distance to a fire extinguisher is 75 feet.

The maximum height of a fire extinguisher is 5 feet above the floor.

II. Smoke Alarms

1. Smoke alarm inspections. Smoke alarm inspections are required to be conducted by the property owner as detailed below.

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

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

Single- or multiple-station smoke alarms: shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings regulated in Group R occupancies, regardless of occupant load at all of the following locations. (IPMC 704.2):
On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

In each room used for sleeping purposes.

In each story within a dwelling unit, including basements and cellars, but not crawl spaces and uninhabitable attics. In dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed

on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

Listed and labeled combination smoke and carbon monoxide alarms are approved for use when installed in accordance with manufacturer's installation instructions.

III. Carbon Monoxide Alarms

1. Carbon monoxide alarms. Carbon monoxide alarm inspections are required to be conducted by the property owner or agent as detailed below. Carbon monoxide alarms are to be installed in existing residential structures in accordance with Colorado state law effective on July 1, 2009. (IPMC 608.1)

Carbon monoxide alarms are required to be installed in existing dwellings and rented single and multi-family dwellings that have fuel fired heaters, appliances or fireplaces or attached garages based on the following guidelines:

Carbon monoxide alarms which receive their primary power from the building wiring shall be checked for good operating condition once each year and supplied with battery back-up, the battery shall be replaced as necessary for proper function of the carbon monoxide alarm.

Battery-powered carbon monoxide alarms shall be tested for proper function on an annual basis. Batteries shall be replaced as necessary for proper function of the carbon monoxide alarm.

Listed and labeled combination smoke and carbon monoxide alarms are approved for use when installed in accordance with manufacturer's installation instructions.

E. IPMC Appendix C Energy Efficiency Requirements (Future)

License Qualifications:

City of Boulder licensed General Class G contractor*

* In addition to the base detailed license requirements, must also be certified through a City of Boulder sponsored training program to inspect prescriptive energy efficiency measures.

Compliance. Effective January 2, 2019, the energy efficiency of existing residential rental dwelling units must comply with Section C101.2.1 for performance-based energy efficiency requirements or Section C101.2.2 for prescriptive-based energy efficiency requirements.

The City of Boulder encourages applicants to achieve compliance as early as possible. www.bouldercolorado.gov/smartregs

Additional Code Related Safety Items Noted Here:

The inspector will not certify a completed baseline inspection until all outstanding issues have been addressed and confirmed at re-inspection. Scheduling a re-inspection is the responsibility of the owner/agent and is performed by a licensed rental-housing inspector.

Baseline Inspection Compliance Verification Form

Please return this portion of the Baseline Inspection Checklist

Note: By signing this form, the licensed inspector certifies that he/she performed the housing inspection for the rental property indicated below and found it complied with the requirements included in the checklist at the time of inspection. The inspector also certifies that he/she has no financial interest in the property and is not related in any way to the owner/agent or tenant.

Property Address _____ Unit # _____

Owner/Agent Name _____

PART A - General Requirements

Company Name _____ Contractor license # _____

Type of license _____ Telephone # _____

Name of Inspector _____

Signature

Please print name

Date of inspection compliance _____ (Must be completed within the previous 12 months)

PART B - Plumbing Facilities and Fixture Requirements

Company Name _____ Contractor license # _____

Type of license _____ Telephone # _____

Name of Inspector _____

Signature

Please print name

Date of inspection compliance _____ (Must be completed within the previous 12 months)

BASELINE INSPECTION COMPLIANCE VERIFICATION FORM CONTINUED

PART C Sec. I-III - Mechanical Requirements

Company Name _____ Contractor license # _____

Type of license _____ Telephone # _____

Name of Inspector _____
Signature Please print name

Date of inspection compliance _____ (Must be completed within the previous 12 months)

PART C Sec. IV - Electrical Requirements

Company Name _____ Contractor license # _____

Type of license _____ Telephone # _____

Name of Inspector _____
Signature Please print name

Date of inspection compliance _____ (Must be completed within the previous 12 months)

PART D - Fire Safety Requirements

Company Name _____ Contractor license # _____

Type of license _____ Telephone # _____

Name of Inspector _____
Signature Please print name

Date of inspection compliance _____ (Must be completed within the previous 12 months)
Packet Page 354 Agenda Item 7A Page 26

BASELINE INSPECTION COMPLIANCE VERIFICATION FORM CONTINUED

The owner/agent must perform the following tests and certify compliance by signing below in order to complete the Baseline Inspection (B.R.C. 1981, 10-2, Section 608, "Carbon Monoxide Alarms" and Section 704, "Fire Protection Systems").

1. Smoke and Carbon Monoxide Alarm Verification: Every smoke and carbon monoxide alarm functions properly, with the alarm sounding after pushing the test button. Smoke detectors must be installed inside sleeping rooms, outside sleeping areas in the immediate vicinity of bedrooms, and on each story. Carbon monoxide alarms must be within 15 feet of all bedrooms.

Number and location(s) of smoke alarms _____

Number and location(s) of carbon monoxide alarms _____

Owner/Agent Signature _____ Print Name _____ Date _____

2. Trash Removal Verification: The City of Boulder requires all rental property owners to have a current and valid contract with a commercial trash removal contractor for removal of accumulated trash from the rental property. By signing below the owner/agent is certifying compliance to this requirement (B.R.C. 1981, 10-2, Section 308, Rubbish and Garbage" and 6-3, "Trash, Recyclables and Compostables").

Commercial Contractor: _____

Owner/Agent Signature _____ Print Name _____ Date _____

3. Energy Efficiency (SmartRegs) Requirements Verification: The City of Boulder's SmartRegs Ordinance No. 7726 requires that residential rental units comply with adopted energy efficiency standards by December 31, 2018. Property owners must demonstrate that their units are SmartRegs compliant in order to receive a full four-year rental license for any license effective on or after January 1, 2015. If a unit is not SmartRegs compliant, the city will issue a reduced-term rental license, expiring on December 31, 2018. If compliance is met before this deadline, the license term will extend to the full four-year period expiring four years from the effective date of the license. Failure to gain compliance may result in increased fees, fines, penalties, or other enforcement action.

By signing below, the owner/agent is certifying acknowledgement of this requirement, its deadline, and that checking "No" below will result in a reduced-term rental license until compliance is met.

This property has received a passing SmartRegs inspection demonstrating compliance with the requirement (B.R.C. 1981, 10-2, Appendix C, "Energy Efficiency Requirements"):

Yes No

Owner/Agent Signature _____ Print Name _____ Date _____
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**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: April 7, 2015

AGENDA TITLE

Consideration of a motion authorizing the city manager to enter into a settlement agreement of a claim for damages, injuries, and medical costs of Byron and Kathy West.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
Bob Eichen, Chief Financial Officer
Maureen Rait, Executive Director, Public Works
Mike Sweeney, Acting Director of Public Works for Transportation
Stewart Ellenberg, Risk Manager
Helen Cowan, Risk Management Specialist

EXECUTIVE SUMMARY

On the morning of February 22, 2015, city staff was involved in a motor vehicle accident at CO119 and Monarch Road, Boulder. The driver of a city snowplow failed to stop at a posted stop sign and collided with a vehicle driven by Mr. Byron West. Mr. West was the sole occupant of the vehicle, his vehicle was destroyed, and he was seriously injured as a result of the collision.

Contingent upon City Council approval, the total negotiated settlement reached for the damages, injuries, and medical costs is \$85,000.00. Section 2-2-14, "Initiation and Settlement of Claims and Suits," B.R.C. 1981 requires that settlement over \$10,000.00 receive prior approval of the City Council. The city attorney recommends approval of payment of this claim.

STAFF RECOMMENDATION

Suggested Motion Language:

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

The City Council approves payment of \$85,000.00 to Kathy and Byron West in consideration of a release of all claims arising from damages, injuries, and medical costs as a result of a motor vehicle accident on February 22, 2015.

ANALYSIS

Staff is proposing that council approve settlement of a claim for damages, injuries, and medical costs of Byron and Kathy West.

On the morning of February 22, 2015, city staff was involved in a motor vehicle accident at CO119 and Monarch Road, Boulder. The driver of a city snowplow failed to stop at a posted stop sign and collided with a vehicle driven by Mr. Byron West. Mr. West was the sole occupant of the vehicle, his vehicle was destroyed, and he was seriously injured as a result of the collision. Thereafter, Helen Cowan with the city's Risk Management division met with Mr. and Mrs. West and documented their costs and Mr. West's injuries, as well as the potential for on-going expenses moving forward.

As with all claims, Helen worked closely with the claimants to ensure that the costs are appropriate and reasonable. The total to settle this claim is \$85,000.00. This amount will be paid out of the Loss Fund. The settlement will include a complete release. Neither party will admit liability.

MATRIX OF OPTIONS

Council has the option of approving or rejecting the proposed settlement. If the settlement is rejected, the matter will likely proceed to litigation.

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.

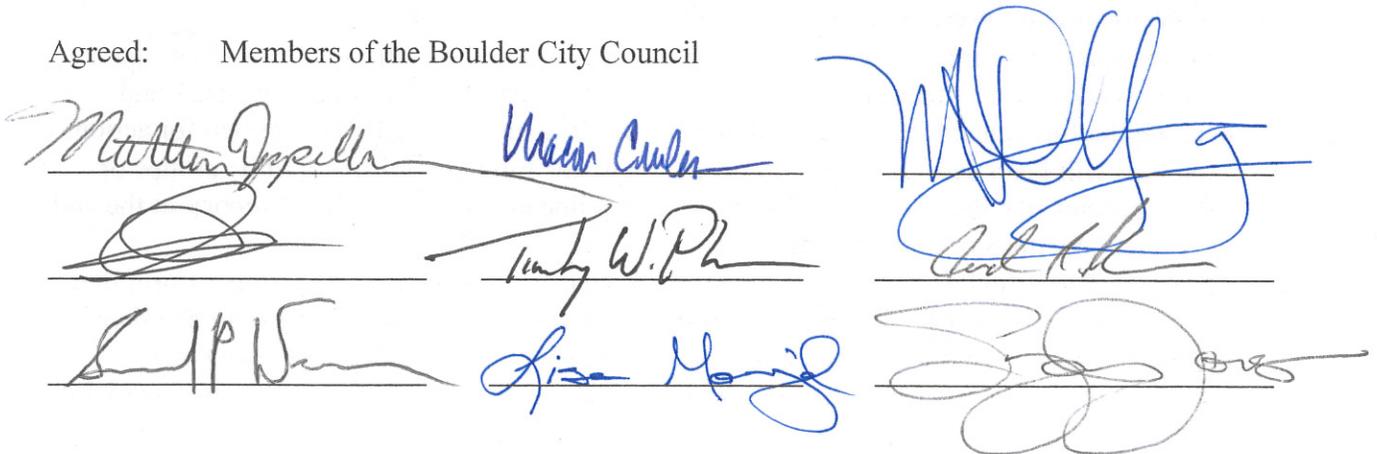
Council Committees:

- 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, Lisa Meryl, and others, arranged in three rows.

City of Boulder 2015 Work Plan

(Tentative as of December 16, 2014)

	Project		1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Climate and Energy	Energy Future and Associated Projects	Council	CC: Open Access Transmission Tariff			
			SS: Power Supply	SS (2): Rates, Energy Services, Power Supply	Project update	Project update
		Staff Activities	Budget update	Budget update	Budget update	Budget update
	Climate Commitment	Council	Municipalization Transition Plan	Municipalization Transition Plan	Municipalization Transition Plan	Municipalization Transition Plan
			Staff Activities	Launch action plan	SS: Review interim goals, targets and strategies Energy system transformation; blue print convening	Implementation based on action plan
		Staff Activities	Briefing	SS (2)		
Housing/Land Use Planning	Comprehensive Housing Strategy (Housing Boulder)	Council	Housing Matters launch event, engagement activities	Draft strategy development	Implementation based on adopted strategy	Implementation based on adopted strategy
		Staff Activities	SS: Direction of preferred scenario	SS : Draft plan and action plan		
	Sustainable Streets and Centers/ East Arapahoe	Council		Next Corridor - 30th St or Colorado		
		Staff Activities	Develop East Arapahoe action plan			
	Resilience	Council	SS	Direction or IP	Direction or IP	Direction or IP
		Staff Activities	Develop scoping plan	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
	Boulder Valley Comprehensive Plan	Council		SS	Direction or IP	Direction or IP
		Staff Activities	Issues identification	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
Transportation	Transportation Master Plan Implementation	Council	Update and coordinate with BVCP		Update and coordinate with BVCP	
		Staff Activities				
	Regional Travel	Council		Briefing		Briefing
		Staff Activities	Staff and elected official activities ongoing			
	Access Management and Parking Strategy (AMPS)	Council		SS : Review options & Update; including recommendations for TDM tool kit for new development	Council action on TDM Tool Kit for new development	Recommendations including planning code changes
						SS: Review options and update
		Staff Activities	Ongoing work plan in 7 focus areas	Ongoing work plan	Ongoing work plan	Ongoing work plan
			Alternatives analysis and specific option development		Specific option development/refinements	
	Joint Board workshop & public engagement		Joint Board workshop & public engagement			

City of Boulder 2015 Work Plan

(Tentative as of December 16, 2014)

	Project		1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	
Civic Area	Civic Area Implementation	Council	SS: Parkland Concepts Plan	CC: Approval of Concept Plan			
		Staff Activities	Outreach to community & partners; create delivery plan for spring, summer, fall events	Deliver spring events	Deliver summer activities and events	Review 2015 activation; compare lessons from 2014 and revise for 2016	
			Draft of parkland concept plan options for public workshop, Boards, Council review	Board/Commission input on Concept Plan	Begin detailed design work on park improvements	Complete detailed design work for bidding	
			Develop overall site master plan concepts, begin to formulate major capital projects	Initial feasibility planning on major capital projects	Continue to develop capital projects, identify potential partners, explore financing options	Continue to develop capital projects, identify potential partners, explore financing options	
Local Food	Sustainable Agriculture and Local Foods	Council	IP and local meals for Council Pilot		Council consideration of Local Food Procurement Policy; Review and acceptance of Ag Resources Management Plan	Council consideration of Local Food Procurement Policy; Review and acceptance of Ag Resources Management Plan	
		Staff Activities					
Livability	University Hill Moratorium	Council	SS: Review options		IP		
			CC: Public Hearing and Decision				
		Staff Activities	Recommendation & development of ordinances, changes and recommend other strategies to address Moratorium goals	Follow up on other strategies & coordination with Hill Reinvestment Strategy; incorporate strategies into other work plan			
			Board review & public engagement		Board review & public engagement		
	University Hill Reinvestment Strategy	Council			Direction on 14 th Street redevelopment proposal		SS
					SS: Update on strategy		
		Staff Activities	Residential service district (RSD) pilot program	RSD pilot program	RSD pilot program	RSD pilot program	
			Work plan implementation	Work plan implementation	Work plan implementation	On-going work plan implementation	
			Establish benchmarks and evaluation criteria	Commercial district: Eco Pass Study & Commercial bear dumpsters	Implement volunteer program for clean up	Evaluate existing programs	
			14 th Street Lot public/private partnership redevelopment options re: work force affordable housing	14 th Street Lot public/private partnership redevelopment options re: work force affordable housing	Research options for sustainable governance & funding	Develop options for sustainable governance & funding	
		Stakeholder engagement	Stakeholder engagement	Stakeholder engagement	Stakeholder engagement		
	Homeless Action Plan	Council	IP: 2014 Accomplishments	SS: As part of Human Services strategy update		IP - Services and Regional coordination update	
	Staff Activities						
Community Cultural Plan	Council	Council update and input on testing phase	Briefing	SS: Adoption of Community Cultural Plan			
	Staff Activities	Research phase complete. Drafting phase complete. Testing phase begins	Testing phase complete. Certification phase begins	Implementation begins. New public art policy drafting	Public Art Policy drafting		

City of Boulder 2015 Work Plan

(Tentative as of December 16, 2014)

Projects			1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Other	Boulder Junction	Council				
		Staff Activities	Ongoing redevelopment coordination	North Side of Pearl and Goose Creek bridge landscaping install. Bridge opens		Depot Square opens
	Capital Projects Activity	Council	Ongoing and Wastewater Collection System Rehabilitation program begins	Ongoing	SS: 2016-2021 CIP	Ongoing
		Staff Activities				
	CityWide Special Events	Council	Report on 2015 City Events			Summary of 2015 City Events
		Staff Activities	Implement new events application and internal review process	Refine systems as needed	Refine systems as needed	Improve events application for new online Landlinks System in 2016
	Community Broadband	Council	SS			SS
		Staff Activities	Broadband Action Group formation and consultant assessment	Consultant assessment continued	Consultant assessment continued	Present findings and recommendations
	Design Excellence	Council	SS: Staff Recommendations design tools/process changes	IP	CC: Draft recommendations/Adopt strategy	
		Staff Activities	Issues identification/ preliminary work on design tools/ process changes	Technical analysis /develop options	Draft recommendations	
			Public engagement	Boards/public engagement	Boards/public engagement	
	Flood-related Annexations	Council				
		Staff Activities	Flood Annexations - Individual	Flood Annexations - Old Tale Rd	Ongoing	Ongoing
	Human Services Strategy	Council		SS		Public Hearing
		Staff Activities				
	Flood Management	Council			IP: Stormwater Master Plan and Wastewater Collection System Master Plan consideration	
		Staff	Stormwater Master Plan and Wastewater Collection System Master Plan updates continue	Stormwater Master Plan and Wastewater Collection System Master Plan updates continue		
	Smoking Ban - Implementation	Council	CC: Second reading			
Staff Activities		Education campaign	Enforcement begins	Monitor Outcomes	Monitor Outcomes	
Vacation Rental by Owner (VRBO)	Council	SS				
	Staff Activities	Research regulations and possible fees or taxes				

COUNCIL MEMBERS

Matthew Appelbaum	Mayor
Suzanne Jones	Mayor Pro Tem
Macon Cowles	Council Member
George Karakehian	Council Member
Lisa Morzel	Council Member
Tim Plass	Council Member
Andrew Shoemaker	Council Member
Sam Weaver	Council Member
Mary Young	Council Member

COUNCIL EMPLOYEES

Thomas A. Carr	City Attorney
Jane S. Brautigam	City Manager
Linda P. Cooke	Municipal Judge

KEY STAFF

Mary Ann Weideman	Assistant City Manager
Bob Eichen	Chief Financial Officer
Alisa D. Lewis	City Clerk
Patrick von Keyserling	Communications Director
David Driskell	Executive Director of Community Planning and Sustainability and Acting Director of Housing
Molly Winter	Downtown, University Hill Management & Parking Services Director
Heather Bailey	Executive Director of Energy Strategy and Electric Utility Development
Michael Calderazzo	Fire Chief
Joyce Lira	Human Resources Director
Karen Rahn	Human Services Director
Don Ingle	Information Technology Director
Eileen Gomez	Labor Relations Director
David Farnan	Library and Arts Director
James Cho	Acting Municipal Court Administrator
Tracy Winfree	Acting Open Space and Mountain Parks Director
Jeff Dillon	Acting Parks and Recreation Director
Greg Testa	Police Chief
Maureen Rait	Executive Director of Public Works
Cheryl Pattelli	Director of Fiscal Services
Mike Sweeney	Acting Transportation Director
Jeff Arthur	Utilities Director

2015 City Council Committee Assignments

INTERGOVERNMENTAL ORGANIZATIONS

Beyond the Fences Coalition	Morzel, Plass (Castillo – staff alternate)
Boulder County Consortium of Cities	Young, Morzel (alternate)
Colorado Municipal League (CML) – Policy Committee	Jones, Cowles (Castillo – staff alternate)
Denver Regional Council of Governments (DRCOG)	Jones, Plass
Housing Authority (Boulder Housing Partners)	Shoemaker
Metro Mayors Caucus	Appelbaum
National League of Cities (NLC)	Appelbaum, Cowles
Resource Conservation Advisory Board	Morzel (at large seat), Plass
Rocky Flats Stewardship	Morzel, Plass (1 st alternate), Castillo (2 nd alternate)
University of Colorado (CU)/City Oversight	Cowles, Shoemaker, Weaver
US36 Mayors and Commission Coalition	Appelbaum
US36 Commuting Solutions	Karakehian, Morzel (alternate)
Urban Drainage and Flood Control District	Jones

LOCAL ORGANIZATIONS

Boulder Museum of Contemporary Art (BMoCA)	Young
Boulder Convention and Visitors Bureau	Plass, Cowles (alternate)
Dairy Center for the Arts	Jones
Downtown Business Improvement District Board	Weaver, Young

INTERNAL CITY COMMITTEES

Audit Committee	Cowles, Morzel, Shoemaker
Boards and Commissions Committee	Plass, Shoemaker
Boulder Urban Renewal Authority (BURA) Mayoral Appointment	Karakehian
Charter Committee	Karakehian, Morzel, Weaver
Civic Use Pad/ 9 th and Canyon	Karakehian, Morzel, Young
Council Employees Salary Review	Cowles, Shoemaker
Council Retreat Committee	Jones, Morzel
Evaluation Committee	Morzel, Plass
Housing Strategy Process Sub-Committee	Morzel, Shoemaker, Young
Legislative Committee	Jones, Karakehian, Weaver
School Issues Committee	Morzel, Plass, Shoemaker

SISTER CITY REPRESENTATIVES

Jalapa, Nicaragua	Jones
Kisumu, Kenya	Morzel
Llaza, Tibet	Shoemaker
Dushanbe, Tajikistan	Weaver
Yamagata, Japan	Plass
Mante, Mexico	Young
Yateras, Cuba	Karakehian, Cowles (alternate)
Sister City Sub-Committee	Morzel, , Karakehian

2015 Study Session Calendar

	A	B	C	D	E	F	G	H	I	J
1	Date	Status	Topic		Location	Contacts	Materials Due	Draft Summary Due	Final Summary Due	Deadline Email Sent
25	04/14/15	Approved	Board and Commission Reception	5-6 PM	Lobby	Alisa Lewis/Dianne Marshall	04/06/15	N/A	N/A	N/A
26		Approved	Fire Department Operations, Deployment, Light Rescue Vehicle Response and Master Plan update	6-7:30 PM	Chambers	Michael Calderazzo/Laurie Ogden	04/02/15	04/23/15	04/29/15	
27		Approved	2014-2015 Financial Overview and Ballot Measures	7:30 - 9 PM	Chambers	Bob Eichem/Elena Lazarevska	04/02/15	N/A	N/A	
28										
29	04/28/15	Approved	Briefing: Housing Boulder	5-6 PM	Chambers	Jay Sugnet/Melinda Melton		05/07/15	05/13/15	01/15/15
30		Approved	Human Services Strategy	6-8 PM	Chambers	Todd Jorgensen/Linda Gelhaar	04/16/15	05/07/15	05/13/15	
31		Approved	Update on the Community Cultural Plan	8-9 PM	Chambers	Matt Chasansky/Carrie Mills	04/16/15	05/07/15	05/13/15	
32										
33	05/12/15	Approved	Boulder's Energy Future	6-8 PM	Chambers	Heidi Joyce/Heather Bailey	04/30/15	05/21/15	05/27/15	10/19/14
34		Approved	Commercial and Industrial Energy Efficiency Ordinance Options	8-9 PM	Chambers	Kendra Tupper/Melinda Melton	04/30/15	05/21/15	05/27/15	02/10/15
35										
36	05/26/15	Approved	Briefing: Form Based Code	5:30-6:30 PM	Chambers	Sam Assefa/Melinda Melton				
37		Approved	Hill Reinvestment Strategy Update and Policy Direction	6:30-7:45 PM	Chambers	Molly Winter/Ruth Weiss	05/14/15	06/04/15	06/10/15	12/15/14
38		Approved	AMPS Update	7:45-9PM	Chambers	Molly Winter/Ruth Weiss	05/14/15	06/04/15	06/10/15	12/15/14
39										
40	06/09/15	Approved	Housing Boulder	6-7:30 PM	Chambers	Jay Sugnet/Melinda Melton	05/28/15	06/18/15	06/24/15	01/15/15
41		Approved	BVCP/Resilience	7:30-9 PM	Chambers	Lesli Ellis/Melinda Melton				
42										
43	06/23/15		Council Recess June 17-July 12							
44	06/30/15		Council Recess June 17-July 12							
45										
46	07/14/15	OPEN		6-7:30 PM	Chambers		07/02/15	07/23/15	07/29/15	
47		Approved	Ballot Measures	7:30-9 PM	Chambers	Elena Lazarevska/Bob Eichem	07/02/15	07/23/15	07/29/15	
48										
49	07/28/15	OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
50		Approved	Climate Commitment Goal and Strategy Proposal	6-7:30 PM	Chambers	Brett KenCairn/Melinda Melton	07/16/15	08/06/15	08/12/15	01/21/15
51		Approved	30th and Pearl City-owned Site Options	7:30-9 PM	Chambers	David Driskell/Melinda Melton	07/16/15	08/06/15	08/12/15	03/17/15
52										
53	08/11/15	Approved	2016 CIP Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	07/30/15	08/20/15	08/26/15	12/22/14
54		Tentative	Form-Based Code Pilot	7:30-9 PM	Chambers	Sam Assefa/Melinda Melton	07/30/15	08/20/15	08/26/15	
55										
56	08/25/15	OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
57		Approved	TMP Implementation Follow Up (pending first check-in on 2/24)	6-7:30 PM	Chambers	Randall Rutsch/Rene Lopez	08/13/15	09/03/15	09/09/15	02/03/15
58		Approved	Envision East Arapahoe Transportation Analysis and Medical Office Use	7:30-9 PM	Chambers	Randall Rutsch/Rene Lopez	08/13/15	09/03/15	09/09/15	
59										
60	09/08/15	Approved	2016 Budget Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	08/27/15	09/17/15	09/23/15	12/22/14
61		Approved	Emerald Ash Borer	7:30-9 PM	Chambers	Kathleen Alexander/Sally Dieterich	08/27/15	09/17/15	09/23/15	01/29/15
62										
63	09/22/15	OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
64		Approved	2016 Budget Study Session	6-7:30 PM	Chambers	Elena Lazarevska/Bob Eichem	09/10/15	10/01/15	10/07/15	12/22/14
65		OPEN		7:30-9 PM	Chambers		09/10/15	10/01/15	10/07/15	
66										
67	09/29/15	OPEN		6-7:30 PM	Chambers		09/17/15	10/08/15	10/14/15	
68		OPEN		7:30-9 PM	Chambers					
69										
70	10/13/15	OPEN		6-7:30 PM	Chambers		10/01/15	10/22/15	10/28/15	
71		OPEN		7:30-9 PM	Chambers					
72										
73	10/27/15	OPEN	Briefing:	5:30-6 PM	Chambers		N/A	N/A	N/A	
74		OPEN		6-7:30 PM	Chambers		10/15/15	11/05/15	11/11/15	
75		OPEN		7:30-9 PM	Chambers					
76										
77	11/10/15	Approved	AMPS Update	6-7 PM	Chambers	Molly Winter/Ruth Weiss	10/29/15	11/19/15	11/25/15	12/19/14
78		OPEN		7-9 PM	Chambers					
79										

2015 Study Session Calendar

	A	B	C	D	E	F	G	H	I	J
1	Date	Status	Topic		Location	Contacts	Materials Due	Draft Summary Due	Final Summary Due	Deadline Email Sent
80	11/24/15	Thanksgiving Holiday Week								
81										
82	12/08/15	Approved	Utility Rate Study: Preliminary Findings	6-7:30 PM	Chambers	Eric Ameigh/Jeff Arthur/Rene Lopez	11/25/15	12/17/15	12/23/15	12/10/14
83		OPEN		7:30-9 PM	Chambers					
84										
85	12/22/15	Christmas Holiday Week								
86	12/29/15	New Years Holiday Week								

April 21, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 4/9 :: Final 4/15
Agenda Section	Item Name	Time				
SPECIAL PRESENTATIONS	Boulder Day of Remembrance of the Armenian Genocide		Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	Study Session Summary 3/31: Boulder Civic Area direction for Civic Area Master Plan and Parkland Site Plan	15	Minutes			Joanna Crean/Melinda Melton
	Study Session Summary 3/31: Planning Topics: BVCP, Resilience Strategy, Design Excellence - Form Based Code Pilot and Development Fees					Susan Richstone/Melinda Melton
	Proposed Appropriations for Ballot Item 2A Capital Projects and Appropriations for Recreational Marijuana Revenue (1st reading) - moved from 4/7					Bob Eichen/Elena Lazarevska
	Authorization of the City Manager to enter into an IGA regarding Community Development Block Grant - Disaster Recovery (CDBG-DR) funding with the City of Longmont					Chris Meschuk/Melinda Melton
PUBLIC HEARINGS	2nd reading Ordinance for Annexation of Old Tale Road Neighborhood	120	Minutes	yes	yes	Beverly Johnson/Melinda Melton
	2nd reading Landmark Designation Ordinance for 977 7th Street	15	Minutes		yes	James Hewat/Melinda Melton
	2nd reading Landmark Designation Ordinance for 1029 Broadway	15	Minutes		yes	James Hewat/Melinda Melton
MATTERS FROM CITY MANAGER	Review of proposal for 2017 IRONMAN® 70.3® World Championships	30	Minutes	no	yes	Mike Eubank/Erin Raney
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS	Potential call-up of 2440 Junction Place Concept Plan Review					Chandler Van Schaack/Melinda Melton
	Potential call-up of site review for height modification at 2030 Vassar Street					Chandler Van Schaack/Melinda Melton
	Call-up Item: Water and Wastewater Service Agreement with Avery Brewing Company					Edward Stafford/Erin Raney
	Total Estimated Meeting Time (Hours:Minutes)	4:00				

May 5, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 4/23 :: Final 4/29
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS	2015 Declaration of Boulder Historic Preservation Month					
OPEN COMMENT		45	Minutes			
CONSENT	First Adjustment to Base - First Reading	15	Minutes	No	No	Elena Lazarevska/Bob Eichem
	First Reading Ordinance for Zero Waste Requirements			yes		Kara Mertz/Melinda Melton
	Proposed Appropriations for Ballot Item 2A Capital Projects and Appropriations for Recreational Marijuana (2nd reading) - moved from 4/21					Bob Eichem/Elena Lazarevska
	Motion to approve Letter of Intent with CAGID and St. Julien regarding development of the civic use pad					Molly Winter/Ruth Weiss
PUBLIC HEARINGS	2nd Reading and Consideration of Approval of Amendments to Title 9 for Medical Office	60	Minutes	no	yes	Jeff Hirt/Melinda Melton
	Oliver acquisition	20	Minutes	no	yes	Jim Schmidt/Cecil Fenio
	Bee Safe Boulder Resolution: Staff recommendation and council direction	60	Minutes	no	yes	Rella Abernathy/Melinda Melton
	2nd reading ordinance rezoning 1900 Folsom	60	Minutes	no	yes	Chandler Van Schaack/Melinda Melton
	2nd reading Affordable Housing Linkage Fee	60	Minutes	yes	yes	Susan Richstone/Melinda Melton
	2nd Reading Ordinance Amending the 9th & Canyon Urban Renewal Plan	45	Minutes	yes	yes	Molly Winter/Ruth Weiss
MATTERS FROM CITY MANAGER			Minutes			
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		6:05				

May 19, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 5/7 :: Final 5/13
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS	Declaration for the Gamm's Donation to the Dairy Center for the Arts	10	Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	First Adjustment to Base - Second Reading	15	Minutes			Elena Lazarevska/Bob Eichem
	Proposed cooperative transit TIGER grant application with CU Boulder (moved from 4/21 Matter from City Mgr to 5/19 Consent)					Randall Rutsch/Erin Raney
PUBLIC HEARINGS	Concept Review for 96 Arapahoe	90	Minutes			
	Second Reading Ordinance for Zero Waste Requirements	90	Minutes	yes	yes	Kara Mertz/Melinda Melton
	96 Arapahoe Concept Plan	45	Minutes	no		Elaine McLaughlin/Melinda Melton
MATTERS FROM CITY MANAGER			Minutes			
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL	Update from Council Employee Evaluation Committee	10	Minutes	no	no	Aimee Kane
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		5:05				

June 2, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 5/21 :: Final 5/27
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	Notice of Sale for Stormwater/Flood Bonds	15	Minutes		no	Bob Eichem/Elena Lazarevska
	Study Session Summary for 5/12 Commercial and Industrial Energy Efficiency Ordinance Options					Kendra Tupper/Melinda Melton
	Study Session Summary 4/28: Human Services Strategy			No		Todd Jorgensen/Linda Gelhaar
PUBLIC HEARINGS			Minutes			
			Minutes			
MATTERS FROM CITY MANAGER	Motion to accept the Boulder County Age Well Plan Update (moved from 5/5)	30	Minutes	no	yes	Betty Kilsdonk/Linda Gelhaar
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		1:30				

June 16, 2015 Start Time: 6:00 PM Business Meeting Location: Council Chambers, 1777 Broadway				CAO to Prepare Ord.?	Power Point	Contact Preliminary: 6/4 :: Final 6/10
Agenda Section	Item Name	Time	Minutes			
SPECIAL PRESENTATIONS			Minutes			
OPEN COMMENT		45	Minutes			
CONSENT	Bond Ordinance - Sale of the Stormwater/Flood Bonds	15	Minutes		no	Bob Eichem/Elena Lazarevska
	Disposition of a Utility Easement					Jim Schmidt/Cecil Fenio
PUBLIC HEARINGS	Public Hearing and Acceptance of the revised Civic Area Master Plan and approval of the Parkland Site Plan	60	Minutes		yes	Joanna Crean/Melinda Melton
			Minutes			
MATTERS FROM CITY MANAGER	Questions and Guiding Principles for the Utility Rate Structure Analysis	45	Minutes	no	yes	Eric Ameigh/Erin Raney
	Consideration of Guiding Principles for the Form Based Code (FBC)	45	Minutes	no	yes	Karl Guiler/Melinda Melton
MATTERS FROM CITY ATTORNEY			Minutes			
MATTERS FROM MEMBERS OF COUNCIL			Minutes			
CALL-UPS			Minutes			
Total Estimated Meeting Time (Hours:Minutes)		3:30				

Council Recess - June 17 to July 12



TO: Members of Council
FROM: Mary Moline, City Clerk's Office
DATE: April 7, 2015
SUBJECT: Information Packet

1. CALL UPS

- A. Vacation of a 1464 square foot utility easement that is located in the center of the property at 950 Gilbert Street. (ADR2015-00029)

2. INFORMATION ITEMS

- A. Update on Homelessness Issues

3. BOARDS AND COMMISSIONS

- A. Boulder Design Advisory Board – February 11, 2015
- B. Human Relations Commission – March 16, 2015
- C. Landmarks Board – February 4, 2015
- D. Library Commission – February 2015
- E. Library Commission – January 2015
- F. Open Space Board of Trustees – March 11, 2015
- G. Planning Board – February 5, 2015
- H. Transportation Advisory Board - January 12, 2015

4. DECLARATIONS

- A. Appreciation for Gordon and Grace Gamm's Donation and Support of the Arts
- B. Arbor Day – April 17, 2015
- C. Boulder Arts Week – March 27-April 4, 2015
- D. Boulder Historic Preservation Month – May 2015
- E. Child Abuse Prevention Month – April 2015
- F. "I Have a Dream" Foundation 25th Anniversary – April 8, 2015
- G. Kids to Parks Day – May 16, 2015
- H. Sister City 2015 Volunteers of the Year
- I. Stand Up for Transportation Day – April 9, 2015
- J. UnbelievaBubble Boulder Day – May 1, 2015



**INFORMATION PACKET
MEMORANDUM**

To: Members of City Council

From: Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Charles Ferro, Development Review Manager
Jonathan Woodward, Associate Planner

Date: March 17, 2015

Subject: Call-Up Item: Vacation of a 1464 square foot utility easement that is located in the center of the property at 950 Gilbert Street. (ADR2015-00029).

EXECUTIVE SUMMARY:

The applicant requests vacation of a 1464 square foot utility easement at 950 Gilbert Street (refer to **Attachment D** for exact location). The city reserved the utility easement, pursuant to the Deed of Vacation, in an unused alley recorded in the records of the Boulder County Clerk & Recorder as Film No. 717, Reception No. 962321 on the 14th day of December 1970. Utilities are not present at this location and will not be needed in the future. All requisite utility companies have approved the request.

The proposed vacation was approved by staff on March 18, 2015. There is one scheduled City Council meeting on April 7, 2015 which is within the 30 day call-up period.

CODE REQUIREMENTS:

Pursuant to the procedures for easement vacations set forth in subsection 8-6-10(b), B.R.C. 1981, the city manager has approved the vacation of a 1464 square foot portion of the existing utility easement. The date of final staff approval of the easement vacation was March 18, 2015 (refer to **Attachment E, Notice of Disposition**). This vacation does not require approval through ordinance based on the following criteria:

- It has never been open to the public; and
- It has never carried regular vehicular or pedestrian traffic.

The vacation will be effective 30 days later, on April 17, 2015, unless the approval is called up by City Council.

FISCAL IMPACTS:

None identified.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- Economic: No economic impact is anticipated.
- Environmental: No impacts are anticipated through this utility easement vacation.
- Social: None identified.

BACKGROUND:

The subject property is a 32,982 square foot lot located in a Residential – Estate (RE) zone district (refer to **Attachment A**, *Vicinity Map*). The property is encumbered by a utility easement in the center of the property that runs east-to-west (refer to **Attachment B**, *Site Plan*). The applicant has requested to vacate this utility easement which was reserved by the city in 1970 when it vacated the unused alley.

Given that there is no public need for the easement for which it was intended, failure to vacate the requested easement would cause hardship to the property owner. It would also limit the development potential of the property.

ANALYSIS:

Staff finds the proposed vacation of a 1464 square foot portion of an existing utility easement consistent with the standard set forth in subsection (b) of section 8-6-10, “*Vacation of Public Easements*”, B.R.C. 1981. Specifically, staff has determined that no public need exists for the portion of easement to be vacated because all public utilities are located in public right-of-way or other easements.

No vacation of a public easement shall be approved unless the approving agency finds that:

- X 1. Change is not contrary to the public interest.
- X 2. All agencies having a conceivable interest have indicated that no need exists, either in the present or conceivable future, for its original purpose or other public purpose.
- X 3. Consistent with the Comprehensive Plan and Land Use Regulations.
- X a. Failure to vacate the easement would cause a substantial hardship to the use of the property consistent with the Comprehensive Plan and Land Use Regulations; or
- N/A b. Would provide a greater public benefit than retaining the property in its present status.

PUBLIC COMMENT AND PROCESS:

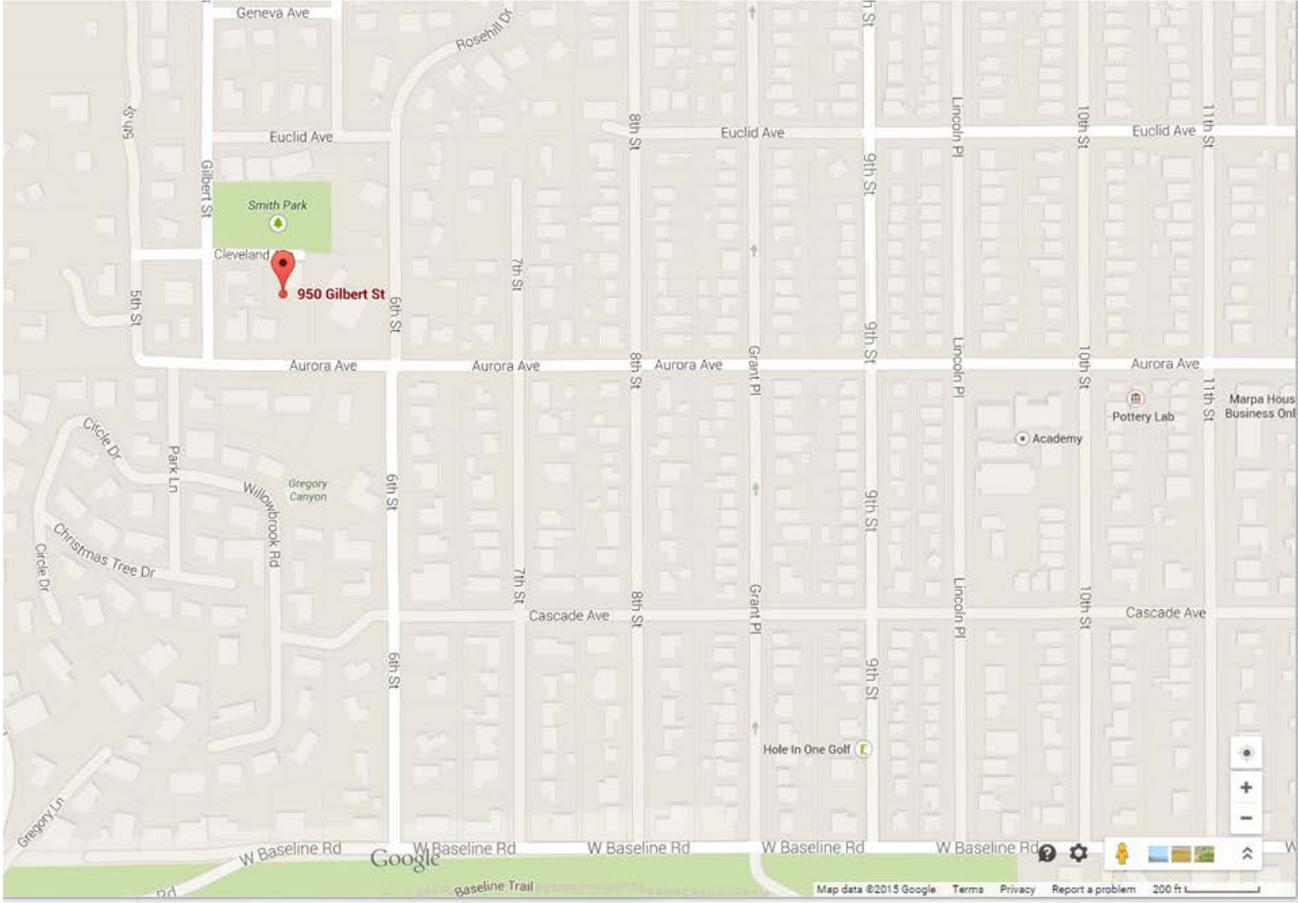
Notice of the vacation will be advertised in the Daily Camera within the 30 day call up period. Staff has received no written or verbal comments adverse to the vacation.

NEXT STEPS:

If the requested vacation is not called up by City Council, then the Deed of Vacation (**Attachment C**) will be recorded. If the requested vacation is called up, and subsequently denied, the applicant will be limited to development on the property outside of the easement area.

ATTACHMENTS:

- Attachment A: Vicinity Map
- Attachment B: Site Plan
- Attachment C: Deed of Vacation
- Attachment D: Exhibit A
- Attachment E: Notice of Disposition



For Administrative Purposes Only
Address: 950 Gilbert Street
Case No. ADR2015-00029

DEED OF VACATION

The City of Boulder, Colorado does hereby vacate and release to the present owners of the subservient land, in a manner prescribed by Section 8-6-10(b), B.R.C. 1981, a utility easement previously reserved by the City of Boulder pursuant to the Deed of Vacation recorded in the records of the Boulder County Clerk & Recorder as Film No. 717, Reception No. 962321 on the 14th day of December 1970, located at 950 Gilbert Street, and as more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference

The above easement vacation and release of said easement at 950 Gilbert Street shall extend only to the portion and the type of easements specifically vacated. The within vacation is not to be construed as vacating any rights-of-way or easements or cross-easements lying within the description of the vacated portion of the easement.

Executed this _____ day of _____, 2015, by the City Manager after having received authorization from the City Council of the City of Boulder, Colorado.

CITY OF BOULDER, COLORADO

By: _____
Jane S. Brautigam,
City Manager

Attest:

City Clerk

Approved as to form:



City Attorney's Office

3-11-2014

Date

EXHIBIT "A"

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH,
RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF BOULDER, STATE OF COLORADO
SHEET 1 OF 2

A VACATION OF A PORTION OF THE PLATTED ALLEY AS SHOWN ON THE PLAT OF GENEVA PARK ADDITION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING NORTH RIGHT-OF-WAY LINE OF CLEVELAND AVENUE TO BEAR NORTH 89°34'48" WEST, A DISTANCE OF 250.17 FEET BETWEEN A FOUND #5 REBAR AND A FOUND #5 REBAR WITH ALUMINUM COLLAR, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF VACATED CLEVELAND AVENUE PER ORDINANCE 2648; THENCE SOUTH 00°22'00" WEST, ALONG THE EAST LINE OF VACATED CLEVELAND AVENUE PER ORDINANCE 2648 AND LOT 5, BLOCK 4 OF SAID GENEVA PARK ADDITION, A DISTANCE OF 144.86 FEET, TO THE NORTH LINE OF AN ALLEY IN SAID BLOCK 4, TO THE POINT OF BEGINNING;

THENCE SOUTH 00°22'00" WEST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 89°33'27" EAST, ALONG THE NORTH LINE OF LOT 8 AND PORTION OF LOT 9, BLOCK 4 OF SAID GENEVA PARK ADDITION, A DISTANCE OF 83.68 FEET; THENCE NORTH 00°26'46" EAST, A DISTANCE OF 10.00 FEET; THENCE NORTH 89°33'14" WEST; A DISTANCE OF 41.75 FEET; THENCE NORTH 00°29'31" EAST, A DISTANCE OF 5.00 FEET, TO THE NORTH LINE OF AN ALLEY IN SAID BLOCK 4; THENCE SOUTH 89°33'27" EAST, ALONG THE SOUTH LINE OF PORTION OF LOT 3, LOT 4 AND LOT 5, BLOCK 4 OF SAID GENEVA PARK ADDITION, A DISTANCE OF 125.40 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 1464 SQ.FT. OR 0.03 ACRES, MORE OR LESS.

I, JOHN B. GUYTON, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.



JOHN B. GUYTON
COLORADO P.L.S. #16406 FSI JOB NO. 14-64,743
CHAIRMAN/CEO, FLATIRONS, INC.

JOB NUMBER: 14-64,743
DRAWN BY: B. HAAS
DATE: 2/3/15

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

Flatirons, Inc.
Surveying, Engineering & Geomatics



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BOULDER, CO 80301
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FAX: (303) 443-9830
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CITY OF BOULDER
Community Planning and Sustainability

1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-3241 • web www.bouldercolorado.gov

ADMINISTRATIVE REVIEW
NOTICE OF DISPOSITION

You are hereby advised that the following action was taken by the Planning Department:

DECISION: Approved
DATE: March 18, 2015
REQUEST TYPE: Vacation Easement
ADDRESS: 950 Gilbert Street
APPLICANT: Kim Cattau for Matt and Meg Erickson
CASE #: ADR2015-00029
LEGAL DESCRIPTION: See Exhibit A
DESCRIPTION: EASEMENT VACATION of a utility easement that was previously reserved by the City of Boulder in the center of the property at 950 Gilbert Street.

FINAL DECISION STANDARDS:

Approved as submitted. This application is approved per the criteria for Vacation of Public Easements as set forth in section 8-6-10, B.R.C. 1981. This approval does not constitute building permit approval.

This approval is limited to the vacation of a 1464 square foot unused utility easement which was previously dedicated to the City of Boulder. The city reserved the utility easement pursuant to the Deed of Vacation recorded in the records of the Boulder County Clerk & Recorded as Film No. 717, Reception No. 962321 on the 14th day of December 1970. The city and utilities company no longer need the utility easement, and it is not in use.

INFORMATIONAL COMMENTS:

Pursuant to section 8-6-10(b), B.R.C. 1981, approval of an easement vacation, "is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the City within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation."

This decision is final and may not be appealed. A new request may be considered only as a new application.

Approved By:

Jonathan Woodward, Planning Department



INFORMATION PACKET MEMORANDUM

To: Members of City Council

From: Jane S. Brautigam, City Manager
Karen Rahn, Director, Human Services
Wendy Schwartz, Human Services Planning and Program Development Manager
Lindsay Parsons, Human Services Planner

Date: April 7, 2015

Subject: Information Item: Update on Homelessness Issues

EXECUTIVE SUMMARY

This information item provides an update on staff work to address homelessness in the City of Boulder, including development of the City of Boulder Homelessness Strategy and progress on key initiatives.

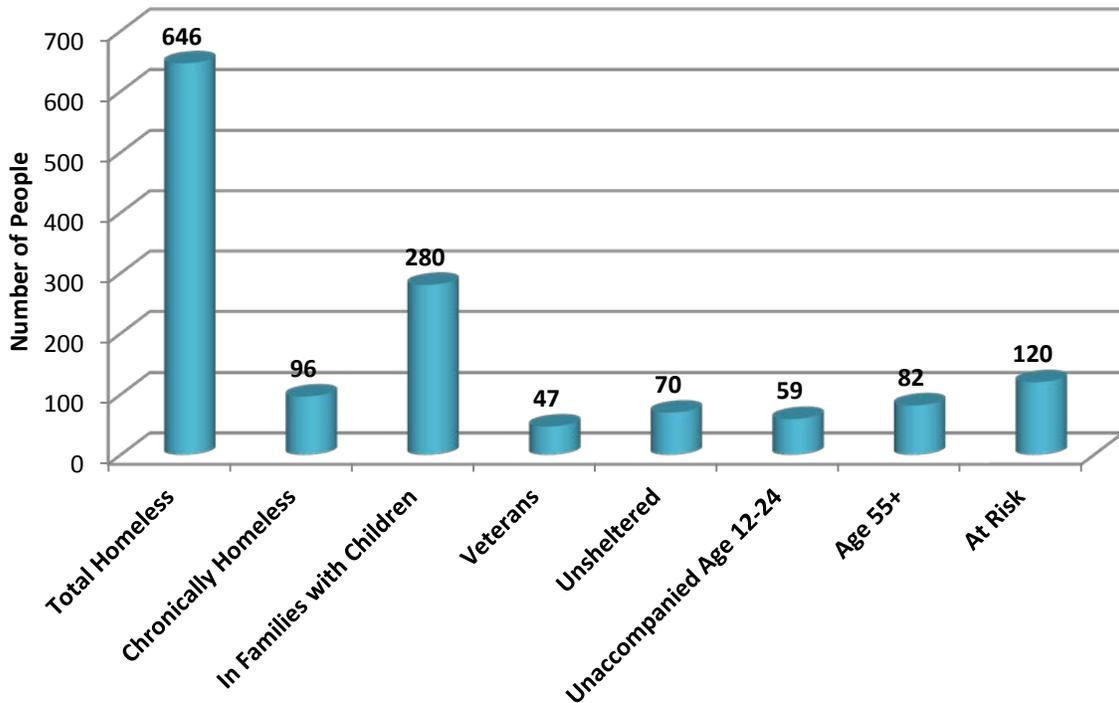
Additional information on homelessness can be found in past [Council Agenda Items and Information Packets on homelessness.](#)

BACKGROUND

Update on Point in Time Survey (PIT)

Over the past three years, an average of 646 people have been counted as homeless in the City of Boulder in the annual PIT. In addition to people surveyed through PIT, the Boulder Valley School District reports 400 children accessed homeless services through the district during the 2013-14 school year, with 186 of those students in City of Boulder schools. Many school district homeless services participants are not captured in PIT counts due to differences in methodology and homeless definitions in programs supported by the federal government. PIT has challenges as a data collection mechanism, and national estimates suggest PIT undercounts the homeless population. The Metro Denver Homeless Initiative (MDHI) is working to improve the survey to make it a more reliable and valid tool.

People Experiencing Homelessness in the City of Boulder



A number of factors contribute to people falling into homelessness. The text box at left reflects top reasons for homelessness reported in the 2014 PIT survey. In many cases, people reported more than one factor contributing to their homelessness.

Reasons for Homelessness in Boulder

2014 Point In Time Survey

- Lost Job **40%**
- Housing Costs **34%**
- Family Breakup **28%**
- Mental Health **25%**
- Substance Abuse **19%**
- Domestic Violence **12%**

Homeless Services and City Support

A wide variety of homeless services are available in the city, including:

- emergency shelter, food and clothing
- medical, dental, mental health and substance use treatment
- case management
- employment training
- transitional housing
- permanent and permanent supportive housing

The city, other government partners and private philanthropy have made significant capital and operating investments to support these homeless

services. On an annual basis, the city contributes nearly \$700,000 in operating support for homeless services, in addition to an investment of approximately \$4 million in capital investments between 2008-2014. In addition, other basic needs investments to local agencies which may also serve homeless people total approximately \$920,000 in 2015.

In 2010, the City of Boulder was one of several local governments and other partners in Boulder County to adopt the [Boulder County Ten-Year Plan to Address Homelessness](#) (Ten-Year Plan). The Ten-Year Plan is organized around six goals, with an emphasis on [Housing First](#), a national best practice with demonstrated success helping people escape chronic homelessness by providing permanent housing with supportive services. In the past five years, significant progress has been made in the City of Boulder, and throughout the county, on Ten-Year Plan goals. See City of Boulder Homelessness Accomplishments (**Attachment A**), as well as the [Summary of Ten-Year Plan Accomplishments](#) for details.

Despite progress on Ten-Year Plan goals, homelessness remains a significant community concern. Although PIT survey data does not indicate an increase in the homeless population, anecdotal evidence from the community, reports from service providers about demand suggest an increasing need to focus targeted, innovative city and regional efforts on solutions.

To address this need city staff, in consultation with local stakeholders, began creating a city-specific homelessness plan in 2014, to complement the Ten-Year Plan. Potential elements of the plan, including draft strategies and initiatives, were discussed with City Council at study sessions on [May 13, 2014](#) and [Aug. 26, 2014](#). Development of the plan has also been discussed on an ongoing basis with members of the Boulder Homelessness Planning Group (BHPG), comprised of representatives from several city departments, homeless service providers, Boulder's housing authority and the faith community.

The proposed process for continuing work on the city's homelessness strategy, and progress on initiatives are described below.

Homelessness Strategy and Action Plan

A draft City of Boulder Homelessness Strategy framework (Framework, **Attachment B**) identifies a vision statement, guiding principles and goals to formalize and clarify the goals and role of the city in addressing homelessness, based on prior council feedback. The draft framework was developed based on:

- Key guiding plans previously approved by the city, including the Ten-Year Plan;
- National best practices and federal policy;
- Direction from City Council; and
- Consultation with local stakeholders through BHPG.

The draft framework will be modified based on input from council, stakeholders and the public going forward and will become a formal Homelessness Strategy to be adopted by City Council by the end of 2015. A Homelessness Strategy Timeline (Timeline, **Attachment C**) is attached to this memo.

The Homeless Action Plan (HAP) are the specific strategies and initiatives previously discussed with council and stakeholders to implement the Strategy. HAP is proposed as a nimble, flexible action plan that is a “living” document and can be updated as opportunities arise. This draft action plan is included in the attached Homelessness Strategy framework.

PROGRESS ON KEY INITIATIVES

At the May 13 and Aug. 26 2014 study sessions, council directed staff to further explore several strategies and initiatives. Progress on these is included below.

Strategy 1 – Strengthen Regional Partnerships

1. Consortium of Cities Regional Dialogue – Representing the City of Boulder on the Ten-Year Plan Board, city and county staff presented information to the Consortium on housing and service issues across the county. The Consortium requested the Ten-Year Plan Board return with a proposal for a county-wide, permanent supportive housing study and cost. City and county staff are currently working on a proposal to submit to the Consortium in April.
2. 25 Cities Initiative Pilot – In the first six months of this pilot project, 15 of the most vulnerable veterans and chronically homeless people in Boulder County (9 from the Boulder) have been matched with housing resources (vouchers or units) from a centralized Metro Denver Regional housing list and 95 have been assessed. Some voucher recipients continue to look for housing in the tight local rental market.

The Metro Denver region is planning to expand this best practice pilot to a full scale regional coordinated entry and housing placement system. The United States Department of Housing and Urban Development (HUD) recently awarded an additional 100-120 vouchers to the region, which will be included as housing resources in the pilot, along with other “turnover” units and vouchers throughout the region.

In addition to fulfilling goals for housing and regional partnership, this pilot offers a chance

25 Cities Initiative Pilot Boulder County Client Profile

- Average **74 months** on the streets
- **62%** report being attacked or beaten up since becoming homeless
- **46%** have gone to ER for potential mental health issues
- **48%** serious brain injury/head trauma
- **58%** survivors of abuse or trauma
- **31%** were in foster care
- **15%** served in military
- **67%** problematic drug/alcohol issues

In the last 6 months averaged:

- **3** ER trips
- **4** law enforcement interactions
- accessed crisis services such as suicide hotline **1** time
- hospitalized **1** time

Places slept most often:

- Shelter – **44%**
- Street, sidewalk doorway – **22%**
- Beach, Riverbed, Park – **20%**
- Car, Van, RV – **12%**
- Other – **2%**

to learn more about the most vulnerable people experiencing homelessness locally. The text box on the previous page provides a snapshot of Boulder County clients that have been assessed, issues they face and focus areas for services.

Strategy 2 – Innovative Solutions to Increase Housing Options

1. Regional landlord campaign – The Metro Mayor’s Caucus is partnering with the [MDHI](#) to launch a regional landlord recruitment campaign to increase the number of units available to homeless people that obtain vouchers. The campaign leadership is currently meeting with landlords and related associations, and has launched the [Colorado Good Landlord Survey](#) to assess the barriers, incentives and support needs of landlords to accept more voucher recipients. City staff are participating in campaign outreach efforts locally to enlist the partnership of more landlords in providing housing for veterans and other vulnerable homeless populations.
2. 1175 Lee Hill – In November 2014, 31 residents moved into the new permanent supportive housing apartments. The City supported this project with approximately \$2 million in capital funding and \$33,000 in 2014 to begin program services. Supportive services for 1175 Lee Hill are also included in the \$120,000 in 2015 operating funds provided to Boulder Shelter for the Homeless programs. This development fills approximately ten percent of the housing need for the estimated 300 chronically homeless individuals in Boulder County.

Management and support of 1175 Lee Hill and its residents is a joint effort of Boulder Housing Partners and Boulder Shelter for the Homeless. These partners have managed the Boulder County scattered site Housing First program for more than seven years and will use experience and benchmarks from that program to measure client progress and success at 1175 Lee Hill. Benchmarks for the Housing First program include:

- About 90 percent of clients are still housed after six months. After more than four months, 87 percent of the original Lee Hill residents are still housed. Attrition at a new program is expected to be higher in early stages than that of a more established program.
- Approximately 70-75 percent of clients are still housed after two years. Lee Hill retention will also be assessed after two years.
- About 85 percent of clients improve in areas of skills/income and self-determination as assessed by the self sufficiency matrix (SSM), a case management tool used by Boulder County and other countywide partners. Lee Hill residents will be assessed for progress on SSM after one year in the program.
- Lee Hill management and City of Boulder Municipal Court will be tracking and comparing local justice system interactions of residents in the first year of the program and the years prior to entering the program.

The 1175 Lee Hill Advisory Group is made up of representatives from the neighborhoods in the immediate vicinity of 1175 Lee Hill. This group was modeled after the Neighborhood Shelter Action Group and has had two quarterly meetings. To date, the advisory group’s work has been to review the Good Neighbor Statement of Operations and discuss updates to the document. Boulder Housing Partners reports there have not

been any neighborhood incidents. The group has also focused on how to provide outreach to support staff and the residents at the site.

Calls to the police and emergency services since the project opened in Nov. 2014:

- notifications for medical/welfare assistance – 20
 - notifications for police assistance – 5
 - arrest - 1
3. Planning and Land Use – The Ten-Year Plan Board has convened a countywide planners group to assess and make recommendations on reducing barriers to the development and acquisition of housing for the homeless across the county. The Boulder County Planning Manager is coordinating and leading this project and is convening meetings with representation from city and county planning and housing departments across the county.

Strategy 3 – Improve Local Service Integration, Coordination, Data Collection and Outcomes Reporting

1. Homeless Services Task Force – The City of Boulder and the key emergency services providers are forming a task force, along with additional representation from the community, including the business and the faith community, to assess the emergency services system, and gaps and needs in continuing the development of an integrated, coordinated homeless services delivery system in Boulder. This will include an assessment of the current sheltering and services system, best and highest use of facilities, and need for day shelter and resource center. This assessment will expand on an earlier report by the Burnes Institute, commissioned by Bridge House, Boulder Shelter for the Homeless and Boulder Outreach for Homeless Overview.
2. Common assessment tool piloting - Boulder homeless service providers, including Boulder Shelter for the Homeless, Bridge House and Mental Health Partners have made strides in implementing coordinated assessment by piloting the Vulnerability Index Service Prioritization Decision Assistance Tool (VI-SPDAT) as part of the 25 Cities Initiative.

This common assessment tool is used throughout the Denver Metro Region and is the first step in working toward a more integrated, coordinated system. Further standardization is expected as the region moves toward bringing the 25 Cities pilot to scale.

3. System improvement requirements for city funding – Human Services staff has mapped out a draft timeline for implementing system improvement requirements for the 2017 Human Services Fund round, which will take place during the summer of 2016. Staff has had preliminary discussions with other funders about jointly funding a pilot or technical assistance project to assist agencies to overcome system improvement barriers, such as data coordination.

Next steps include further refinement of system improvement goals and requirements, discussion with service providers on barriers and support needed, and further dialogue with

partners about goals and requirements of potential opportunity projects.

4. High Utilizer Project – Municipal Court and Bridge House have a partnership which refers homeless defendants for services. In some cases, this includes reduction of selected sentencing conditions in exchange for intake and engagement in services at Bridge House. Probation officers also offer support to Bridge House Resource Center clients seeking assistance with settling ongoing or past legal issues to remove them as barriers to stability.

The partners are now beginning to match court “repeat offender” or “high utilizer” lists with Bridge House clients to determine current engagement in services and target “non-engaged” high utilizers for case management and service connection.

Staff from Human Services, Municipal Court and Bridge House are evaluating a more formalized “high utilizer project” – developing a shared list of individuals for more intensive service intervention, tracking progress on connecting those people to housing and supportive services and measuring recidivism. The goal would be to reduce the demand of high utilizers on the Police Department, Municipal Court and emergency intervention.

5. Summer population study – Council and the community have expressed interest in learning more about how the city’s homeless population may differ in the summer and the winter. Anecdotal evidence suggests one significant difference is a higher population of “travelers” or “transients” that travel through Boulder during warmer months who are not reflected in the annual PIT survey, conducted in the winter. Homeless services also change locally during the summer, with the majority of winter shelter beds and warming center locations closed.

To better understand the temporary population of people who travel through Boulder in the summer, Human Services staff is investigating a summer survey in partnership with other regional stakeholders. Initial discussions about this concept are underway with the goal of executing this study during summer 2015.

6. EDGE Program - In mid 2014 the Boulder Police Department implemented the EDGE program (Early Diversion, Get Engaged), in partnership with Mental Health Partners. Mental health clinicians work out of the police department and respond to calls to provide direct intervention services to community members in need. The program has become an important asset to the police department and to date has been very successful in providing additional services and resources at the time of police of contact.

Strategy 4 – Improve Community Education and Dialogue About Homelessness

Homelessness Communications Plan – Staff is developing a communications plan, targeted for launch during the second quarter of 2015, to create a more effective community dialogue around homelessness. Current goals include:

- Promote knowledge of the diverse people experiencing homelessness, reasons for becoming homeless and barriers to exiting homelessness;
- Improve understanding of national best practices in addressing homelessness, as well as actions the city and its partners are taking to tackle the issue locally;

- Celebrate successes in reducing homelessness in Boulder;
- Expand readily available information on homelessness through a variety of communication mechanisms and include the homeless; and
- Build a sense of pride and partnership with the community and residents in jointly working to reduce homelessness.

In implementing the plan, staff will coordinate with other entities, such as the Ten-Year Plan Board, MDHI and the Denver Foundation, which are also developing efforts to improve regional communication and information about homelessness.

Denver Foundation Research and Campaign

In January 2015, The Denver Foundation began collecting data around perceptions of homelessness and identifying the strongest messages for a public will-building campaign. Across the seven-county Denver Metro Region, including Boulder County, 812 registered voters participated in the initial survey. Focus groups are also being conducted. Data at the Boulder County level will be available in the coming weeks for use in our local communication plan around homelessness. Regional results from the survey are available on the [Denver Foundation website](#).

OTHER UPDATES

As community needs evolve, homeless service providers are responding with changes in service delivery models. Since 2009, Boulder Outreach for Homeless Overflow (BOHO) has operated overnight emergency warming centers at rotating faith-based locations in the winter, in addition to as-needed emergency day shelters during severe weather. A smaller-capacity outdoor “summer sleep” program, which began in 2011, has been discontinued and replaced by two new year-round programs to serve chronically homeless guests at rotating faith-based locations.

- **Women’s Shelter:** Women’s Shelter is open to chronically homeless women residents with a record of good behavior at BOHO.
- **Resident’s Shelter:** Resident’s Shelter is open to chronically homeless residents with a record of good behavior at BOHO.

During the winter season, BOHO’s programs have averaged a combined attendance of about 125 guests per night for a season of about 135 nights.

NEXT STEPS

- Human Services Strategy Study Session – April 28, 2015
- Council check-in on Homelessness Strategy – Third Quarter 2015
- Council approval of Homelessness Strategy and Action Plan – Fourth Quarter 2015

ATTACHMENTS

- A. City of Boulder Homelessness Accomplishments**
- B. Draft City of Boulder Homelessness Strategy Framework**
- C. Homelessness Strategy Timeline**

City of Boulder Homelessness Accomplishments 2013-2015

1. 25 Cities Initiative Pilot

- At least 15 people from Boulder County matched with housing resources
- Boulder County has submitted approximately 6 percent of people into regional pilot, and been matched with nearly 20 percent of the housing resources
- Common vulnerability assessment tool now being used by multiple local agencies to prioritize homeless people for housing – starting place for system integration goals
- Learning about vulnerable people – clients have averaged about four law enforcement interactions in the past six months and people connected with housing so far could save many law enforcement interactions in Boulder over next year
- More housing matching expected as more housing resources go into pilot

2. 1175 Lee Hill opened to first 31 occupants – November 2014

- Thousands in savings expected in law enforcement, justice system, medical
- Housed approximately 10 percent of the estimated chronically homeless people countywide
- Approximately \$2 million contributed from city

3. Construction in progress on Ready To Work Transitional Housing

- 48 people will be housed while gaining employment training
- City contributed \$1.2 million

4. Construction of five additional transitional housing units for families

- \$45K contributed from City of Boulder

5. Boulder Homeless Planning Group (BHPG) Behavior Guidelines

- BHPG approves common client behavior standards for service

6. Supportive Housing Toolkit

- Attention Homes, Boulder County Housing Authority, Boulder Housing Partners, Boulder Shelter for the Homeless, Bridge House partner to develop permanent supportive housing development concept. Potential sites in county under consideration.

7. “Walkabout” Observational Data Gathered – Summer/Fall 2013

- City staff and local homeless service providers walked the civic area creek path multiple days to collect observational data on the number of potentially homeless individuals present that were known to the justice system or accessing homeless services - approximately 80 percent unknown to both systems, with high turnover among unknowns from week to week

8. Adult Homeless Providers Collaborate on Assessment

- Boulder Outreach for Homeless Overflow (BOHO), Boulder Shelter for the Homeless and Bridge House jointly embarked on a consultant evaluation (Burnes Report) of their opportunities to better coordinate services

- The three agencies have ongoing weekly meetings, and are implementing more consistent data reporting

9. Metro Denver Homeless Initiative (MDHI)

- City staff (Wendy Schwartz) appointed to MDHI Board, greater connection of Boulder to regional resource planning

10. Metro Mayor’s Caucus Homeless Committee

- Developed short, medium and long-term goals to increase resources and support on a regional level to address homelessness
- Partnering with MDHI on a regional landlord campaign, which could help people in Boulder use vouchers if more landlords are recruited

11. Consortium of Cities

- Interest in supporting a countywide assessment of permanent supportive housing needs.

12. Annual Human Services Fund Homelessness Results - 2014

- More than 450 people received employment training, and subsequently gained employment
- More than 2,800 people at-risk of homelessness have received temporary assistance with rent, utilities or other expenses to prevent a costly slide into homelessness
- 7836 meals served/food distributed
- More than 2,720 people received emergency overnight shelter
- Approximately 200 people were provided with transitional housing
- Almost 850 people received onsite medical, mental health or substance use services at homeless service organizations
- Approximately 46 people maintained or obtained permanent housing

13. Countywide homeless housing inventory

- Created by City of Boulder in 2013 to track system resources and capacity

14. BOHO service changes

- Created women-only and residents warming centers for ongoing clients with good behavior records

15. Increased city support for Bridge House employment training programs

16. Regional Grants Management System implemented

- Standardized impact areas, outcomes and goals among four regional funders

17. Annual homeless memorial

- Commemorate lives of homeless people who died on the streets in Boulder

18. Public information on homelessness

- “Human Services Insight” on Channel 8
- City of Boulder Employee Forum
- Updates to city homelessness site for more mobile-friendly access to resource information

19. Conducted Point-In-Time (PIT) Survey

- Gathered information for a “snapshot” of homelessness

20. Fort Lyon

- At least 25 people from Boulder County have been accepted into Fort Lyon, a supportive residential program in Bent County for people experiencing homelessness and in need of substance use treatment

21. VISTA Volunteer

- Through MDHI the city has gained a VISTA volunteer to work on homelessness projects beginning in February 2015

22. EDGE Program

- The Boulder Police Department has partnered with Mental Health Partners on the EDGE program to divert individuals with mental health needs from the justice system to treatment

23. Municipal Court/Bridge House partnership to connect homeless defendants with needed services

- Defendants referred to Bridge House Resource Center - in some cases, sentencing conditions can be modified with engagement in services



DRAFT City of Boulder Homelessness Strategy Framework

Homelessness Strategy Purpose

The purpose of the City of Boulder Homelessness Strategy is to:

- 1) Clarify city goals in addressing homelessness;
- 2) Maximize efficiency and effectiveness of city resources in reducing homelessness;
- 3) Engage community partners more broadly in solutions; and
- 4) Provide a strategic road map for city action on homelessness.

Homelessness Strategy Guiding Principles

The Homeless Strategy guiding principles and goals are informed by national best practices in addressing homelessness, local community needs, and other local and regional policy documents.

- *Consider homelessness in a regional context*
People experiencing homelessness are highly mobile, seeking services, employment, housing and other needs. Policies, resources and strategies in one city, county or metro area impact homelessness among neighboring jurisdictions. Planning and resources should be leveraged regionally.
- *Respect for the strength and dignity of diverse individuals*
A wide variety of people experience homelessness for many different reasons. Solutions should consider diverse homeless individuals and families and their needs.
- *Support to advance self sufficiency and maximize independence*
Individuals and families should have support to achieve the maximum degree of self sufficiency and independence possible.
- *Effective use of resources within a coordinated and collaborative system*
National best practices demonstrate that coordinated, collaborative systems yield better outcomes for people and cost-effective solutions for communities.

Homelessness Strategy Goals

- *Prevent Homelessness*
Provide support to prevent individuals and families from the traumatic and costly slide into homelessness.
- *Provide temporary shelter and supportive services as needed*

Maintain a safety net of emergency shelter, food and other needed services with a pathway to long-term solutions such as permanent housing.

- *Provide long-term housing and support solutions*

Provide housing options and support; including permanent supportive housing for chronically homeless individuals and families and rapid re-housing for people with fewer support needs.

- *Improve systems to support efficient and effective services and outcomes*

Implement best practices in homelessness that result in a system that is coordinated, integrated, easy to navigate and provides performance information that supports analysis of outcomes and opportunities for improvement.

- *Improve public education and communication*

Provide accessible information about homelessness and people experiencing homelessness and how the community can be involved in solutions.

Homeless Action Plan

The Homeless Action Plan (HAP) provides implementation strategies and action items to achieve the goals of the Homelessness Strategy.

Strategy 1 – Strengthen Regional Partnerships

- 1.a. Work with other funders, local and regional partners and service providers to identify barriers and resources needed to implement system improvements
- 1.b. Actively support the proposed goals of the Metro Mayors Caucus, Homeless Committee
- 1.c. Engage Consortium of Cities for countywide dialogues and solutions
- 1.d. Actively engage in regional homelessness reduction efforts

Strategy 2 – Innovative Solutions to Increase Housing Options

- 2.a. Develop community dashboard on goals
- 2.b. Identify any new opportunities in the Consolidated Plan to prioritize homeless housing
- 2.c. Strengthen landlord relationships for housing retention and incentives
- 2.d. Address barriers to maximizing federal housing resources
- 2.e. Support community initiatives to develop housing for the homeless
- 2.f. Address land use barriers to developing and acquiring housing

Strategy 3 – Improve Local Service Integration

- 3.a. Require system improvements (coordinated assessment, intake, case management, data) as condition of city funding
- 3.b. Develop prioritization system, including vulnerability assessment, for services
- 3.c. Conduct a more thorough evaluation of emergency sheltering system and update target goals for sheltering, including feasibility of expanded day services center and summer study of homelessness.
- 3.d. Strengthen Municipal Court Referrals to Bridge House and other services
- 3.e. Support Boulder Police Department EDGE Partnership with Mental Health Partners

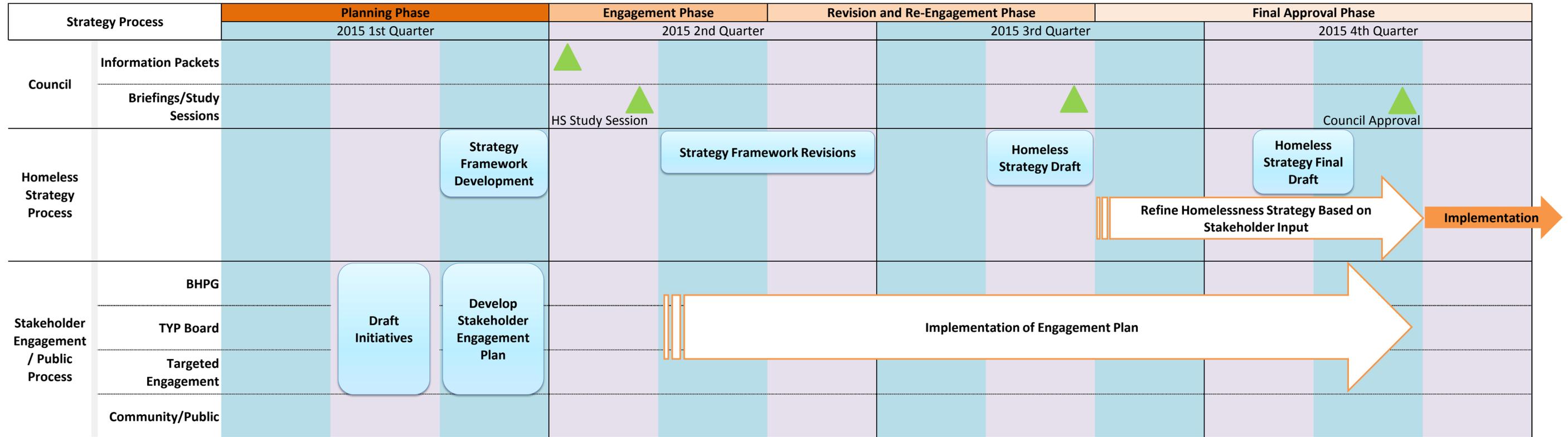
Strategy 4 – Improve Community Education

- 4.a. Work with community stakeholders to improve communications and information about homeless populations, initiatives and results achieved.

Strategy 5 – Prevent Homelessness

- 5.a. Continue support and coordination of city and regional programs that help people out of poverty, including affordable housing programs and supportive/temporary assistance programs.

City of Boulder Human Services Homelessness Strategy Timeline



CITY OF BOULDER
BOULDER DESIGN ADVISORY BOARD MINUTES
February 11, 2015
1777 Broadway, 1777 West Conference Room

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

BDAB MEMBERS PRESENT:

David Biek
Fenno Hoffman, Chair
Michelle Lee

BDAB MEMBERS ABSENT:

Jamison Brown
Jeff Dawson

PLANNING BOARD EX-OFFICIO MEMBER PRESENT:

Bryan Bowen

STAFF PRESENT:

Sam Assefa, Senior Urban Designer

BOARD DISCUSSION:

1. Approval of Minutes

BDAB approved the January 14, 2015 BDAB minutes.

2. One Boulder Plaza

After providing feedback on the project, BDAB members unanimously agreed that the One Boulder Plaza application met the Design Guidelines and the following review criteria:

- 2.11 *Consider the Quality of Open Space Incorporated in New and Renovated Buildings*
- 6.6 *Create Comfortable and Attractive Sitting Areas, Plazas and Small Open Spaces*
- 6.10 *Create Gateway Elements at Important Downtown Entrance Ways*
- 6.11 *Establish Pedestrian Scale Street Lights Along Street Frontages when Feasible*

BOARD COMMENTS:

- S. Assefa noted that the Boulder Civic Area project is on the City Council agenda in June for the streetscape design for 13th Street as part of the 2A bond measure. This design will help link the crossing with Canyon Blvd. The intention is to create an ease of transition between the One Boulder Plaza and the 13th Street Plaza.
- M. Lee pointed out that there is a lot of clutter on the corners of Broadway and Canyon and 13th Street and Canyon. She inquired as to how the applicants planned to make the corners more attractive. She suggested upgrading the existing light fixtures

to include new wayfinding/branding elements rather than add additional fixtures to those corners that are already cluttered or also relocating the silver utility box as part of the improvement at the North corner.

- **F. Hoffman** brought up a concern about the use of glass for the pergola. Horizontal glass downtown tends to collect dirt and creates a maintenance issue. Since this plaza is planned to be a link to the Farmers' Market, he suggested using another material instead of glass for the pergola, like perhaps an agricultural material that would be a sophisticated interpretation of that function. The glass has a slick quality that is not reminiscent of the Farmers' Market.
- **M. Lee** gave an example of the stone archway at the entrance to the park at the Nature Conservancy. The patterns in the metal on the archway may be a good example of what could be possible with the materials used for the pergola instead of glass.
- **F. Hoffman** recommended making this space a destination (other than when there is a special event). There is not much density in this area. He proposed putting in a fire pit in place of the fountain in the winter months which would attract more people. There needs to be a greater amount of residential density in order to activate the streets. He also recommended adding a few moveable furniture pieces to help create an inviting and friendly space.
- **M. Lee** thought that the current interior courtyard is a harsh and uncomfortable space for visitors as well as residents of the building. She suggested some strategic placement of permanent landscaping.
- **D. Biek** questioned whether nine feet was tall enough for the pergola since the space could handle a taller height.

3. Board Matters

- **F. Hoffman** will complete his edits for the Design Guidelines and then send to the board. They will then be finalized and distributed for review.
- This BDAB meeting was the last for **F. Hoffman**. The March 11 meeting will be the last for **D. Biek**.

APPROVED BY:

D. Biek
Board Chair Acting

3-11-15
DATE

City of Boulder
BOARDS AND COMMISSIONS MEETING SUMMARY FORM

NAME OF BOARD/COMMISSION: Human Relations Commission
DATE OF MEETING: March 16, 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, Nikhil Mankekar, Emilia Pollauf Staff – Carmen Atilano, Robin Pennington, Karen Rahn, Kim Pearson Commissioners absent – José Beteta
WHAT TYPE OF MEETING (CIRCLE ONE) [REGULAR] [SPECIAL] [QUASI-JUDICIAL]
AGENDA ITEM 1 – CALL TO ORDER – The March 16, 2015 HRC meeting was called to order at 6 p.m. by A. Zuckerman .
AGENDA ITEM 2 – AGENDA ADJUSTMENTS – Discussion/Informational Item 6. A. Presentation by Police Chief Greg Testa was moved up prior to Action Items 5.
AGENDA ITEM 3 – APPROVAL OF MINUTES – S. White moved to approve the Feb. 23, 2015 minutes. N. Mankekar seconded. Motion carries 4-0.
AGENDA ITEM 4 – COMMUNITY PARTICIPATION (non-agenda action items) – Community members Cynthia Beard, Darren O’Connor, Judith Laudsman, Derrick Jones, Jen Watson and Rob Smoke addressed the commission regarding community safety, racial issues, policing and homelessness and the need for continued community dialog.
AGENDA ITEM 5 – ACTION ITEMS A. 2015 HRC Work Plan – The HRC approved its 2015 Work Plan with the addition of an item under Community Relations, Community Education/Awareness to explore the recommendation to City Council of a Caesar Chavez municipal holiday. N. Mankekar moved to accept the 2015 HRC Work Plan as amended. E. Pollauf seconded. Motion carries 4-0. 1. MLK Day Events – S. White moved to postpone this item to April. N. Mankekar seconded. Motion carries 4-0. 2. Funding Allocations – E. Pollauf moved to postpone this item to April. N. Mankekar seconded. Motion carries 4-0.
AGENDA ITEM 6 – DISCUSSION/INFORMATIONAL ITEMS A. Presentation by Police Chief Greg Testa – Chief Testa provided the commission information on community policing, the hiring and training of police officers, the Professional Standards Review Panel review process, and statistics from the recently released Arrest Citation Data Report. A Q&A with the commissioners followed the presentation. B. Living Wage Update – C. Atilano gave an update on work of the city staff committee on Living Wage. C. Event Reports – C. Atilano brought forward a request by BMoCA for a commissioner to give a welcoming statement at Dia del Niño on April 25. S. White agreed to do so. A. Zuckerman attended a meeting to plan a community educational event on Wage Theft.
AGENDA ITEM 7 – IMMEDIATE ACTION ITEMS – None.
AGENDA ITEM 8 – Adjournment – N. Mankekar moved to adjourn the March 16, 2015 meeting. E. Pollauf seconded. Motion carries 4-0. The meeting was adjourned at 8:48 p.m.
TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS: The next regular meeting of the HRC will be April 20, 2015 at 6 p.m. in Council Chambers, Municipal Building, 1777 Broadway St.

**CITY OF BOULDER
LANDMARKS BOARD
February 4, 2015
1777 Broadway, Council Chambers Room
6 p.m.**

The following are the action minutes of the February 4, 2015 City of Boulder Landmarks Board meeting. A digital recording and a permanent set of these minutes (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). You may also listen to the recording on-line at: www.boulderplandevlop.net.

BOARD MEMBERS:

Mark Gerwing, Chair

Kate Remley

Mike Schreiner

Fran Sheets

Deborah Yin

*Crystal Gray **Planning Board representative without a vote*

STAFF MEMBERS:

Debra Kalish, Senior Assistant City Attorney

James Hewat, Senior Historic Preservation Planner

Marcy Cameron, Historic Preservation Planner

Lesli Ellis, Comprehensive Planning Manager

Angela Smelker, Historic Preservation Intern

1. CALL TO ORDER

The roll having been called, Chair **M. Gerwing** declared a quorum at 6:00 p.m. and the following business was conducted.

2. APPROVAL OF MINUTES

On a motion by **M. Gerwing**, seconded by **K. Remley**, the Landmarks Board approved (5-0) the minutes as amended of the January 7, 2015 board meeting.

3. PUBLIC PARTICIPATION FOR ITEMS NOT ON THE AGENDA

- **Abby Daniels**, Historic Boulder, 1123 Spruce St., spoke about the potential University Hill Moratorium and Historic Boulder's interest in pursuing a historic district for the area.

**4. DISCUSSION OF LANDMARK ALTERATION AND DEMOLITION
APPLICATIONS ISSUED AND PENDING**

- **Statistical Report**
- **Short Presentation by Joe Castro on Energy Efficiency of the City of Boulder's Historic Buildings**
- **Short Presentation by Ruth McHeyser on the University-Hill Moratorium**

5. ACTION ITEMS

- A. **Public hearing and consideration of a Landmark Alteration Certificate to demolish an addition to a contributing house and demolish a c.1988 garage to make way for the construction of a 616 sq. ft. two-car garage and storage shed at 603 Highland Ave. in the Mapleton Hill Historic District, per section 9-11-18 of the Boulder Revised Code (HIS2014-00345). Applicant: Christopher Melton, Owners: Beth & Will Bashan.**

All board members made site visits. **M. Schreiner** recused himself.

Staff Presentation

J. Hewat presented to the board, recommending that the Landmarks Board approve the application with conditions to be reviewed and approved by the Landmarks design review committee.

Applicant's Presentation

Christopher Melton, 761 North Ave., Macon, GA, architect, spoke in support of the Landmark Alteration Certificate application.

Joel Smiley, 521 Maxwell, contractor, spoke in support of the Landmark Alteration Certificate application.

Public Hearing

Richard Collins, 604 Mapleton, neighbor of 603 Highland Avenue, spoke in opposition to the reducing of the 2-car garage to one and one-half car garage.

Abby Daniels, 1123 Spruce St., Executive Director of Historic Boulder, Inc., spoke in general support of the Landmark Alteration Certificate.

Motion

On a motion by **M. Gerwing**, seconded **D. Yin**, the Landmarks Board approved (3-1, **K. Remley** objecting) the Landmark Alteration Certificate at 603 Highland Ave. as shown on plans dated February 4, 2015 finding that they generally meet the standards for issuance of a Landmark Alteration Certificate in Section 9-11-18, B.R.C. 1981, subject to the conditions below, and adopts the staff memorandum dated February 4, 2015 as findings of the board with the following conditions:

CONDITIONS OF APPROVAL

1. The applicant shall be responsible for constructing the house and garage in compliance with the approved plans dated February 4th, 2015, except as modified by these conditions of approval.
2. The dimension of door opening on the first floor of the east elevation shall not be changed and the existing south door to the east balcony shall be preserved;
3. The proposed garage shall be revised to reflect a depth of no more than 22 feet.

4. The details for the restoration of the second floor porch on the south elevation be reviewed by the Ldrc to ensure that it is an accurate restoration based on historic photographs and physical evidence.
5. The fenestration on the new addition shall be studied and revised to be more compatible with the historic portion of the house.
6. The installation details of the proposed solar panels shall be subject to final review and approval at the LDRC.
7. Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall submit revised drawings showing conditions 2 and 3 and 4 above have been met, as well as the following, all of which shall be subject to the final review and approval of the Landmarks design review committee: window and door details, wall material details, siding material details, paint colors, roofing material details, exterior lighting, fence details, east balcony details, solar panel details, and details regarding any hardscaping on the property to ensure that the approval is consistent with the *General Design Guidelines* and the *Mapleton Hill Historic District Guidelines* and the intent of this approval.

K. Remley objected to the motion finding that in her opinion the proposed addition and garage are incompatible with the historic house, the character of the district and are contrary to Design Guidelines Sections 4.1, 4.2, 4.3, 4.5 and Mapleton Guidelines T & G.

B. Public hearing and consideration of issuance of a demolition permit for the house located at 645 Walnut St., non-landmarked building over 50 years old, pursuant to Section 9-11-23 of the Boulder Revised Code (HIS2014-00351). Applicant: Jennifer Campbell, Owner: Edward Parent.

All board members made site visits. **M. Gerwing** reviewed the case at a Design Review Committee meeting. **K. Remley** recused herself.

Staff Presentation

M. Cameron presented to the Landmarks Board recommending a demolition permit be issued.

Applicant's Presentation

Ed Parent, 215 Fox Dr., owner of the property, spoke in support of issuing a demolition permit. **Jennifer Campbell**, 730 Pine St., a representative for the property, spoke in support of issuing a demolition permit.

Public Hearing

Abby Daniels, 1123 Spruce St., Executive Director of Historic Boulder, Inc., spoke in support of the possibility of preserving the building but that Historic Boulder did not oppose issuance of a demolition permit.

Motion

On a motion by **M. Schreiner**, seconded by **M. Gerwing**, the Landmarks Board approved (3-1, **F. Sheets** objecting) the demolition permit application for the building located at 645 Walnut St. finding that, due to a loss of architectural integrity, the property is not eligible for landmark designation, and adopt the staff memorandum dated February 4, 2015, as the findings of the board. The Landmarks Board recommends that prior to issuance of the demolition permit; staff requires the applicant to submit to CP&S staff for recording with Carnegie Library:

1. A site plan showing the location of all existing improvements on the subject property;
2. Measured elevation drawings of all faces of the buildings depicting existing conditions, fully annotated with architectural details and materials indicated on the plans.

C. Public hearing and consideration of an application to designate the property at 977 7th St., as a local historic landmark per Section 9-11-5 of the Boulder Revised Code, 1981 (HIS2014-00366). Applicant/Owner: Janelle Krueger & Cosima Krueger-Cunningham.

Staff Presentation

M. Cameron presented to the board, recommending that the Landmarks Board forward the application to City Council with a recommendation to designate the property as an individual landmark.

Applicant's Presentation

Janelle Krueger, 645 Walnut Street, owner, spoke to the reasons for wanting to landmark the property and asked the statement presented to become part of the landmark record.

Public Hearing

Abby Daniels, 1123 Spruce St., Executive Director of Historic Boulder, Inc., spoke on behalf of the preservation committee in strong support of the designation.

Motion

On a motion by **M. Gerwing** seconded by **K. Remley** the Board voted (5-0) to adopt a resolution to initiate landmark designation the property at 977 7th St. as a local historic landmark, to be known as the Krueger-Cunningham House, finding that it meets the standards for individual landmark designation in Sections 9-11-1 and 9-11-2, B.R.C. 1981, and adopts the staff memorandum dated February 4, 2015, including the following as the findings of the board:

FINDINGS

The Landmarks Board finds that, based upon the application and evidence presented and subject to the conditions of approval, the proposed designation application will be consistent with the purposes and standards of the Historic Preservation Ordinance, and:

1. The proposed designation will protect, enhance, and perpetuate a building reminiscent of past eras and persons important in local and state history and provide a significant example of architecture from the past. Sec. 9-11-1(a), B.R.C. 1981.
2. The proposed designation will maintain an appropriate setting and environment and will enhance property values, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage. 9-11-1(a), B.R.C. 1981.
3. The proposed designation draws a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings important to that heritage will be carefully weighed with other alternatives. 9-11-1(b), B.R.C. 1981.
4. The proposed designation is consistent with the criteria specified in Section 9-11-5(c), B.R.C. 1981.

6. MATTERS FROM THE LANDMARKS BOARD, PLANNING DEPARTMENT AND CITY ATTORNEY

- A. Update Memo
- B. Post City Council Retreat Update
- C. Subcommittee Update
 - 1) Demolition Ordinance
 - 2) Outreach
 - 3) Potential Resources
 - 4) Design Guidelines

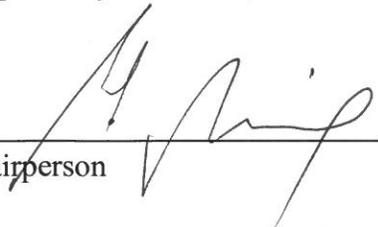
7. DEBRIEF MEETING/CALENDAR CHECK

8. ADJOURNMENT

The meeting adjourned at 11:23 p.m.

Approved on March 4, 2015

Respectfully submitted,



Chairperson

**CITY OF BOULDER
BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING
MINUTES**

Name of Board/ Commission: Library Commission	
Date of Meeting: February 4, 2015 at the Main Library, Arapahoe Conference Room, 1001 Arapahoe Ave.	
Contact Information Preparing Summary: Carrie Mills, 303-441-3106	
Commission Members Present: Anne Sawyer, Paul Sutter, Donna O'Brien, Joni Teter and Alicia Gibb Commission Members Absent: None	
Library Staff Present: David Farnan, Director of Library & Arts Jennifer Miles, Deputy Library Director Carrie Mills, Administrative Specialist II City Employees: Glenn Magee, Facilities Design and Construction Manager Devin Billingsley, Senior Budget Analyst Jennifer Bray, Communication Specialist III Kathy Lane, Programs Specialist Public Present: Joel Keonig	
Type of Meeting: Regular	
Agenda Item 1: Call to Order and Approval of Agenda The meeting was called to order at 6:00 p.m.	[6:00 p.m., Audio 0 min]
Agenda Item 2: Public Participation Joel Keonig commended police who patrolled the library for their sensitivity to the situation. He noted that these patrols do not solve the issue, but appreciated that the staff, security, and police forces for their recent work.	[6:00 p.m., Audio 0:10 min]
Agenda Item 3: Consent Agenda Item 3A, Approval of Jan. 7, 2015 minutes (p. 2-5) Teter submitted comments prior to the start of the meeting, found here: https://boulderlibrary.org/wp-content/uploads/2014/12/Handouts.pdf In response to the second comment made by Teter in her earlier remarks, Farnan recommended striking everything after "...attendees." Mills noted that Billingsley was absent from the list of city employees in attendance. Sutter moved to approve the minutes with the aforementioned changes. O'Brien seconded. Approved unanimously, 5-0.	[6:03 p.m., Audio 1:03 min]
Agenda Item 4: Update/discussion about Boulder Police patrol/enforcement in the Main Library – Commander McEldowney Commissioners postponed this agenda item until Commander McEldowney's arrival. McEldowney reported to the commissioners on the three weeks of police enforcement at the Main Library, covering the following points:	[6:50 p.m., Audio 49:55 min]
<ul style="list-style-type: none"> • Officers are addressing violations of laws and municipal rules. • In this initial phase, officers are present every day for a 6-hour shift. The shifts were varied throughout the week to allow more comprehensive coverage. • In the next phase, officers will be present four days per week with varied days and hours. • At the time of McEldowney's visit, officers had made 4 warrant arrests and had given 11 tickets, most commonly for smoking near the entrances. In total, the officers gave more than 30 warnings. • Officers focused on activity inside the library. In response to the patrol, officers have remarked on the change in climate at the library. Many patrons have thanked the officers for their work. • Beginning in April, there will be increased patrols around the municipal campus. The city organization is looking towards long-term solutions for this problem, but appreciates the importance of an immediate impact. 	

Commission discussion, questions, and comments included:

- O'Brien noticed an absence of Letters to the Editor and direct complaints, likely indicative of community support.
- McEldowney noted that the police try to avoid the band-aid approach of increasing patrol temporarily in lieu of long-term change. Gibb wondered what the effect of the band-aid approach was once patrol was removed, to which McEldowney explained that it is common to see a resurgence of the original problem.
- Teter asked where people should go on cold days when the library is not an option. McEldowney pointed to churches and homeless shelters in Boulder, noting that there is always a place unless the individual has violated a house rule.
- Sawyer wondered how officers felt about coming to the library. McEldowney reported that officers had positive feedback about their experiences and enjoyed working with staff and security.
- The commissioners asked McEldowney to convey their thanks to the officers.
- Sawyer asked the commission for the next step. O'Brien and others suggested letting the program run its course and then revisit the topic in May following feedback from staff.
- Sutter felt that it would be advantageous to have a meeting with public officials on this topic. Farnan and Sawyer felt that the commission should supply the officials with questions ahead of time to maximize the discussion.

Agenda Item 5: Main Library renovation project update (p. 6-7)

[6:03 p.m., Audio 3:24 min]

Magee announced that the construction crew is on track for a Feb. 12 opening for the first floor, noting that some tasks may still be remaining for completion by that date, such as glass installation and painting. Magee confirmed that they have received the building permit for the café. Sawyer commented on the excitement of the orange tunnel and new seating installation.

Agenda Item 6: Review renovation celebration plans – Jennifer Bray and Kathy Lane

[6:06 p.m., Audio 6:22 min]

Bray remarked that she and Lane are leading a large committee for the renovation celebration. The festivities are set for Saturday, April 11. Bray revealed the new name: The Main Event. Bray detailed that the day begins with a drum circle and ribbon cutting upon opening at 10 a.m. The Boulder Library Foundation has funded \$8,000 for the celebration. Foundation member Bill Kellogg is serving on the committee. The festivities will feature and highlight the services and programs that the library offers every day. Plans include story times, roaming dancers and musicians, and tours for the public, as well as continual 20-minute performances through the day in the theater. Bray noted that Seeds Café has offered to serve refreshments, though definitive plans have not yet been made. Sunday, April 12 carries a lighter schedule with self-guided tours and a large concert in the theater.

Agenda Item 7: Follow-up on library budget questions – Devin Billingsley (p. 8-11) [6:11 p.m., Audio 11:33 min]

Billingsley presented a comprehensive follow-up to his presentation in January, found here:

<https://boulderlibrary.org/wp-content/uploads/2014/12/2015FebLCPacket.pdf#page=8>.

Commission discussion, questions, and comments included:

- Sawyer recommended adding this to the commission packet with an interchangeable component with the actual facts and figures bi-yearly. Billingsley planned to develop the secondary report for the next commission meeting.
- Teter asked Billingsley for the impact fees study. Billingsley agreed to send it along to the commission.
- Sawyer recommended that the commission invite a staff member from Facilities and Asset Management (FAM) to get an update on the impact fees study and its impact on the library.
- Sawyer asked for any stipulations on funds from the Blystad-Laesar house. Billingsley noted that since the funds are unappropriated, the City Council would first need to appropriate them.

Agenda Item 8: Review of the draft The Foundry terms of use policy (p. 12-15)

[6:21 p.m., Audio 21:48 hr]

With increasing interest from the community, the library and the commission were interested in building a policy to allow adult patrons to utilize The Foundry. During this agenda item, Commander McEldowney arrived, at which point the conversation turned to Agenda Item 4. At 7:22 PM, the commission returned to this agenda item.

Commission discussion, questions, and comments included:

- Gibb noted that the draft policy was uninviting, serving more as a solution to a problem that did not yet exist. She recommended removing the requirement for reservations until it becomes a problem.
- Sawyer wondered if reservations could be an option, but also allow patrons to drop in as available. Further, she noted that limiting the space to teens until an hour before closing on some days made it difficult for

anyone to use it after, citing one hour as not enough time to accomplish much.

- Gibb felt that creating in a maker or hacker space is more organic than the 2-hour limitation suggests. In turn, O'Brien suggested the "community table" approach, to which Gibb agreed. Teter responded with concern about the size of the space, but was supportive of the idea overall.
- Commissioners agreed that it should serve as an extension of the Teen Space at certain times during the week. Sutter suggested 3-6 p.m. on weekdays. Teter wants feedback on how the space is used and any preference by the Youth Services staff before proceeding.
- Gibb saw teens teaching community members new technology as a great opportunity and a signifier of a successful transition. In turn, Sutter suggested teen community hours to facilitate this exchange. Sawyer asked for simple tutorials to recommend to community members who want to learn more about the equipment. Teter recommended reaching out to Front Range Community College teachers with active programs. Ultimately, Teter and others decided to defer to Crystal Niedzwiedek, teen librarian, on many of these questions.
- Commissioners discussed issues around project storage for patrons. Ideas included community flash drives, community hard drives, flash drives for purchase, and policy language around digital storage expectations.
- Sutter called for more precise language in the Lost and Damaged Equipment section. Gibb hoped that this section is not used too strictly; noting that wear and tear is common and inevitable. Sawyer echoed others' concerns about vagueness. Sawyer noted that circumstances might be vague, but the policy should not be.
- Commissioners made edits to the text to ensure accurate grammar and sensible sentence structure.

Agenda Item 9: Library Commission Update (from memo) (p. 16-21) [7:31 p.m., Audio 1:31:30 hr]

Sawyer addressed a note sent by a patron regarding a snide comment from a security guard. Prior to the meeting, Sutter replied to citizen questions regarding the Broadway and Yarmouth intersection. The commissioners reviewed the city's response to concerns on the intersection. Sutter noticed that in the report, the city did not once mention pedestrians. He explained that the intersection is complicated between parked cars, traffic, busses, and sightlines. Sutter felt that the best short-term solution is a flashing crosswalk. Teter inquired about the length of the NoBo Corner Library's lease, noting that the library could consider a new space in a better location that meets needs of the community better.

Agenda Item 10: Discuss Library Commission Handbook update (p. 22-25) [7:46 p.m., Audio 1:45:50 hr]

Commissioners reviewed two sections from the Library Commission Handbook. There was discussion about the importance of keeping a section which explains the logistics of commission meetings and preparation. Sutter offered to prepare a draft revision.

Agenda Item 11: Report on January 23-24, 2015 City Council Retreat [7:52 p.m., Audio 1:52:35 hr]

Farnan submitted items for a follow-up memorandum. Those sections are included in the handouts packet, found here: <https://boulderlibrary.org/wp-content/uploads/2014/12/Handouts.pdf#page=2>.

Agenda Item 12: Library and Arts Director's Report (p. 41-45) [7:56 p.m., Audio 1:55:50 hr]

The commissioners discussed many points within the director's report, found here: <https://boulderlibrary.org/wp-content/uploads/2014/12/2015FebLCPacket.pdf#page=26>.

Item 12A, Follow-up on potential partnerships

Farnan reported that the Small Business Development Center (SBDC) successfully moved in to the Main Library's north wing. Downtown Boulder, Inc. (DBI) and Boulder International Film Festival partnerships continue to move forward. Farnan is also in discussions with the Dairy Center for the Arts for theater use in 2016.

Item 12B, Follow-up on Internet filtering investigation

Farnan is investigating why the library was not in compliance with Internet filtering laws, but assured commissioners that there is no penalty for non-compliance. Sawyer recommended updating existing policies by outlining the library's stance on filtering once a decision is reached. Further, Sawyer wanted to ensure that the decision and subsequent announcement did not compete with The Main Event. Teter advocated for proactive outreach to press and interest groups. Gibb wanted to ensure that staff would have access to a disabling mechanism to the filtered Internet. Teter motioned for staff to proceed with developing a policy and plan for implementing a technology protection measure. Sutter seconded. Approved unanimously, 5-0.

Item 12C, Follow-up on Knight Cities Challenge Grant

Farnan submitted an application to the Knight Cities Challenge Grant. Of 7300 applications, Farnan's application moved into the next round with a more extensive application process. Grant winners will be revealed in late March.

Agenda Item 13: Future Items/Scheduling**[8:18 p.m., Audio 2:18:25 hr]**

- Update on library rules enforcement
- Main Library Renovation update
- Proposed first round of adjustment to base budget (ATB)
- Policy review for The Foundry Terms of Use and Security Cameras
- Charter changes feedback
- Filtering software (review current Internet policy, range of vendors) (moved to April)
- Discuss job descriptions for commissioners
- Update on NoBo Corner Library intersection traffic

Commissioners elected to move the April meeting to April 8, 2015 in the Canyon Meeting Room.

O'Brien announced that she would not be in attendance for the March meeting. Consequently, she wanted to take a moment to thank publicly Sawyer for her work on the commission.

Agenda Item 14: Adjournment**[8:24 p.m., Audio 2:23:57 hr]**

There being no further business to come before the commission at this time, the meeting was adjourned at 8:24 p.m.

Date, Time, and Location of Next Meeting:

The next Library Commission meeting will be at 6 p.m. on Wed., Mar. 4, 2015, at the Carnegie Branch Library for Local History, 1125 Pine St., Boulder, CO 80302.

Commissioner Anne Sawyer approved these minutes on March 12, 2015; and Carrie Mills attested to this approval on March 12, 2015.

An audio recording of the full meeting for which these minutes are a summary, is available on the Library Commission web page at <http://boulderlibrary.org/about/commission.html>

**CITY OF BOULDER
BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING
MINUTES**

Name of Board/ Commission: Library Commission
Date of Meeting: January 7, 2015 at the Main Library, Arapahoe Conference Room, 1001 Arapahoe Ave.
Contact Information Preparing Summary: Carrie Mills, 303-441-3106
Commission Members Present: Anne Sawyer, Paul Sutter, Joni Teter, and Donna O'Brien Commission Members Absent: Alicia Gibb
<p>Library Staff Present: David Farnan, Director of Library & Arts Jennifer Miles, Deputy Library Director Carrie Mills, Administrative Specialist II</p> <p>City Employees: Glenn Magee, Facilities Design and Construction Manager Devin Billingsley, Senior Budget Analyst</p> <p>Public Present: Kai Cui, President, Boulder Teen Advisory Board Kate Jendersee Joel Koenig</p>
Type of Meeting: Regular
<p>Agenda Item 1: Call to Order and Approval of Agenda [5:59 p.m., Audio 0:15 min] The meeting was called to order at 5:59 p.m. Sawyer added Internet filtering to the agenda under the director's report. Sutter added a discussion on pre-circulating comments on the commission packet as a practice under the Library Commission update. Farnan asked to add a brief update on the Civic Area under the director's report.</p>
<p>Agenda Item 2: Public Participation [6:01 p.m., Audio 1:30 min] Kate Jendersee referred to a previously submitted email sent to Alicia Gibb, Anne Sawyer, and Joni Teter, found here: http://boulderlibrary.org/pdfs/commission/2015/2015JanHandouts.pdf. She voiced her concerns with the library's high transient population and related issues. Jendersee wants to use the library, but is put off by recurring problems. Jendersee asked the commissioners what she should do when she encounters these difficult situations. In response, Sawyer noted that it is not Jendersee's responsibility to act, but she is invited to alert staff. Farnan assured Jendersee that the staff and security are working towards a safe and comfortable experience. Further, Farnan confirmed that she is not alone in her sentiments. Sawyer explained that they are all working to refine the rules so that it gives staff the tools to handle uncomfortable situations. Jendersee asked if the commission and staff had the authority to remove problem patrons. O'Brien noted that it comes down to the rules, asserting that all patrons who abide by the library policies are welcome to stay. Further, O'Brien urged Jendersee not to confront the situations herself, but to inform staff or security. The commissioners thanked Jendersee for her valuable feedback.</p>
<p>Agenda Item 3: Consent Agenda [6:10 p.m., Audio 11:00 min]</p> <p>Item 3A, Approval of Dec. 8, 2014 minutes (p. 3-7) Teter and Sawyer submitted comments prior to the start of the meeting, found here: http://boulderlibrary.org/pdfs/commission/2015/2015JanHandouts.pdf#page=2. Sutter sought clarification over the commission's shared meaning of "digital branch" as prompted by Teter's recommended change. Sawyer suggested changing the term to "digital presence." O'Brien moved to approve the minutes with all three changes. Teter seconded. Approved unanimously, 4-0. Later in the meeting, O'Brien noticed an error in the December minutes concerning the date of the Boulder Maker Faire. This correction was made in the final minutes.</p>
<p>Agenda Item 4: Main Library renovation project update [6:14 p.m., Audio 14:28 min] Magee announced that the work crew is done with the clerestory window project which wrapped just before Christmas. Construction is midway through Phase 4. The north building will soon be painted and carpeted. Sawyer called a break from 6:16 to 6:44 p.m. so that commissioners could tour the construction areas.</p>

Agenda Item 5: Library budget basics – Devin Billingsley, Senior Budget Analyst [6:46 p.m., Audio 18:07 min]

Billingsley discussed the Library Department Budget Basics, found here:

<http://boulderlibrary.org/pdfs/commission/2015/2015JanLCPacket.pdf#page=11>. Sawyer was impressed with the information and felt it should be part of the Library Commission Handbook. Billingsley provided a handout which included answers to the commissioners' questions, found here:

<http://boulderlibrary.org/pdfs/commission/2015/2015JanHandouts.pdf#page=6>.

Commission discussion, questions, and comments included:

- Sutter inquired about the Computer Replacement Fund, asking if the library administration felt that they received enough for what they funded. Miles noted that the fund was not only for systems and parts, but also overhead.
- Sawyer appreciated Teter's suggestion to invite Facilities and Assets Management (FAM) to speak with the commission to discuss the Capital Development Fund. Further, Sawyer suggested inviting someone to discuss the Library Fund, impact fees, and more. Teter asked if assumptions used by FAM for equipment replacement and facility updates reflect the customer service orientation of a space like the library.
- Teter wondered if there was a way to include the collections as part of the impact fee analysis. Billingsley believed that the collections were included and agreed to supply Teter with the longer study.
- The commissioners thanked Devin for his library budget basics and Q&A handout.

Agenda Item 6: Finalize commission's recommended changes to the City Charter (p. 16-20)

[6:52 p.m., Audio 25:52 min]

Answers to questions posed during the Charter Review Subcommittee Meeting and the draft changes to the City Charter can be found here: <http://boulderlibrary.org/pdfs/commission/2015/2015JanLCPacket.pdf#page=16>

After discussion, Sutter moved to submit the charter changes to the city as amended. O'Brien seconded. Approved unanimously, 4-0.

Commission discussion, questions, and comments included:

- The initial title, "Permanent Library Fund," will not work as that title is used by the city with other budgetary considerations. Commissioners agreed to leave the naming of Sec. 92 up to the City Attorney's Office.
- Teter and Sutter asked for clarification on the intention of Sec. 92c. After discussion, the commissioners decided to strike Sec. 92, item C from the proposal.
- Commission had questions about the use of "appropriate" in Sec. 90, items D and F. Ultimately, the commissioners decided to remove "any appropriate" from both phrases.
- O'Brien asked about the intent of "administer" in Sec. 90, item H. Sawyer and Sutter saw the confusion, but felt that no other words would fit better.

Agenda Item 7: Library policy review and approval

[7:04 p.m., Audio 37:50 min]

Item 7A, Commission review and approval of Canyon Theater and Gallery terms of use and rental policy (p. 23-29)

This is the commissioners' second reading of the revised policy, found here:

<http://boulderlibrary.org/pdfs/commission/2015/2015JanLCPacket.pdf#page=21> Teter moved to approve the policy as amended. Sutter seconded. Approved unanimously, 4-0.

Commission discussion, questions, and comments included:

- Commissioners suggested grammatical and phrasing edits to ensure clarity and fluidity.
- Sutter thought the policy should clarify what the additional fees cover for events outside the library's operating hours. These fees are for security, staff, and cleaning.
- O'Brien suggested specifying the number of additional chairs and tables available.
- Miles asked if the commissioners preferred to have both the newest draft and a copy with tracked changes from the previous version. The commissioners agreed that the edited version is acceptable without the tracked changes.

Item 7B, Commission to review and provide feedback on the draft sponsorship of programs and events policy (p. 30-37)

This is the commissioners' second reading of the revised policy, found here:

<http://boulderlibrary.org/pdfs/commission/2015/2015JanLCPacket.pdf#page=30> Teter moved to approve sponsorship of programs and events policy as amended. O'Brien seconded. Approved unanimously, 4-0.

Commission discussion, questions, and comments included:

- Commissioners suggested grammatical edits to ensure clarity and fluidity.

- Teter recommended a change in the distinction of the “no admission fee” evaluation criteria, noting that some groups need to charge in order to cover costs. Sawyer suggested changing it to include groups that charge a fee the option to provide a free service or event in support of sponsorship. Sawyer supported including the library’s desire to have free programming. Teter was concerned about the message the library sends with the way the policy is currently written. Ultimately, the commission decided to include a preference for free or fee-based events with a free component, whether it is sponsored admission for some or a similar free event. Sutter suggested changed the title to “Cost to Public” instead.
- Sutter asked how often the library sponsors events, and Farnan confirmed that this is not common, citing the policy as intended to increase sponsorship.
- The draft included an exclusion which limited the policy for sponsorship of events within the library facilities. After much discussion, the commissioners agreed to remove the exclusion and revise the policy later should this type of situation cause problems down the line.
- Sutter asked for clarification on the meaning of “attendance data.” Farnan confirmed that they were only looking for the number of attendees.

Agenda Item 8: Review Library Commission orientation handbook for incoming commissioners (p. 38)

[7:32 p.m., Audio 1:05:52 hr]

The current commission handbook can be found here: <http://boulderlibrary.org/pdfs/commission/2015-commission-handbook.pdf> . Mills submitted a list of the most recent changes, found here: <http://boulderlibrary.org/pdfs/commission/2015/2015JanLCPacket.pdf#page=31>.

Commission discussion, questions, and comments included:

- Commissioners decided on the following changes:
 - Remove pg. 13 to reduce redundancy of articles on Alex Warner
 - Part II, Item 1E – Remove Action Summary and Minutes pieces
 - Item 3C – Link points to state database but does not point to the library. Include last annual report or a query specific to the library.
 - Return to previous copy of the Charter Approval with date and signatures
 - Include an update from Billingsley on the budget
 - Remove outdated material, p. 18-30.
- Sawyer suggested removing p. 35-38 but the commissioners wanted time to reflect and consider before making a decision. As such, those pages will be included in the February packet for consideration.

Agenda Item 9: Library Commission update (from memo) (p. 39-40)

[7:37 p.m., Audio 1:11:14 hr]

Sutter found Teter’s practice of pre-circulating comments on the packet prior to the meeting useful, but wondered if any additional comments circulated might constitute a meeting. To avoid such, Sutter recommended that all commissioners submit comments to the chair who will aggregate the commentary and provide them for the meeting. Teter did not believe that sending comments to the chair remedied the concern. Instead, Teter noted that the City Council members submitted comments prior to the meeting, but avoided conflict by not addressing or responding to any written comments prior to the meeting. Sawyer stated that should commissioners’ read each others’ comments before submitting their own, that this would fall into a gray area. O’Brien cautioned that prewritten comments should not stifle discussion. Teter suggested that commissioners flag items that they most want to discuss at the meeting. Ultimately, Sawyer asked commissioners to submit early commentary to Sawyer, Farnan, and Miles by the Monday following the packet. The comments will then be released after their pre-meeting the day before the commission meeting.

Agenda Item 10: Library and Arts Director’s Report (p. 41-45)

[7:44 p.m., Audio 1:18:11 hr]

The commissioners discussed many points within the director’s report, found here: <http://boulderlibrary.org/pdfs/commission/2015/2015JanLCPacket.pdf#page=41>.

Commission discussion, questions, and comments included:

- In review of the library statistics, Farnan was pleasantly surprised by the statistics considering so much of the collection at the Main Library was boxed. Reynolds had a significant increase in events and attendees. Sawyer was impressed by the significant increase in programming at Reynolds. Farnan expressed some concern over Meadows’ programming numbers due to errors from manual reporting. Sawyer wondered if the web sessions decreased because of the app. Farnan figured that the app has not been active long enough for this to be a direct result. Sawyer appreciated the Prospector stats, but asked for statistics, if available, on Mobius.
- Teter asked for better signage for the Meadows Branch. Miles noted that new signage had been added by the city recently, but the commissioners recommended expanding signage from all directions.

- The commissioners reviewed new operating hours for the library. The hours are set to take effect on March 2, 2015.
- The City Attorney's Office is reviewing whether or not the library is in compliance with [a Colorado State Library Law](#) which requires libraries to protect children who use Internet services from access to material that is harmful to their development. Sawyer noted that Fort Collins complies by allowing patrons to opt-in to filtering as attached to their library card, and requiring filtering for all children unless a parent or guardian signs otherwise. Farnan recommended filtering in compliance with the law, but noted that the commission either had to conform to the law or begin the legal process in opposition; remarking that a lack of action was unacceptable. Teter felt that filtering was efficient and served as a useful deterrent for bad behavior. Sawyer and Sutter agreed that the point is not censorship or limiting access, but instead creating a safe space and welcoming environment. Sawyer also expressed concern over the environment for staff, who are currently responsible for addressing patrons viewing pornography and recommended a hands-off solution. Teter recommended reaching out to local ACLU members and including patrons in the decision.
- Sawyer recommended March as the public hearing date. Teter cautioned that the filtering discussion should not conflict with the library's opening in the press.
- Farnan updated the commission on progress in the Civic Area. He expected work to begin in 2016. Further, Farnan invited commissioners to a public hearing on March 10, and a study session on March 11.

Agenda Item 11: Future Items/Scheduling

[8:11 p.m., Audio 1:44:44 hr]

- Main Library Renovation Update
- Renovation Celebration plans – either Jennifer Bray or Kathy Lane to attend
- Policy Review: Foundry Terms of Use
- Follow-up on budget questions
- Internet filtering follow-up
- Updates on partnerships (SBDC, Farmers' Markets)
- Report on City Council Retreat
- Review commission traits/job description
- Invite city officials to come discuss enforcement issues at the library

Agenda Item 12: Adjournment

[8:20 p.m., Audio 1:54:01hr]

There being no further business to come before the board at this time, the meeting was adjourned at 8:20 p.m.

Date, Time, and Location of Next Meeting:

The next Library Commission meeting will be at 6 p.m. on Wed., Feb. 4, 2015, in the Arapahoe Conference Room at the Main Boulder Public Library, 1001 Arapahoe Ave., Boulder, CO 80302.

Commissioner Sawyer approved these minutes on March 12, 2015; and Carrie Mills attested to this approval on March 12, 2015.

An audio recording of the full meeting for which these minutes are a summary, is available on the Library Commission web page at <http://boulderlibrary.org/about/commission.html>



CITY OF BOULDER
Boards and Commissions Minutes

NAME OF COMMISSION: Open Space Board of Trustees			
DATE OF MEETING: March 11, 2015			
NAME/EXTENSION OF PERSON PREPARING SUMMARY: Leah Case x3440			
NAMES OF MEMBERS, STAFF AND INVITED GUESTS PRESENT:			
MEMBERS: Tom Isaacson, Shelley Dunbar, Molly Davis, Frances Hartogh, Kevin Bracy Knight			
STAFF: Tracy Winfree, Jim Reeder, Mark Gershman, Kelly Wasserbach, Mike Orosel, Steve Armstead, Jennelle Freeston, Greg Seabloom, Lisa Dierauf, Kristin Weinberger, Dave Barry, Deryn Wagner, Michele Gonzales, Leah Case			
GUESTS: NIST Staff			
TYPE OF MEETING:	<u>REGULAR</u>	CONTINUATION	SPECIAL
SUMMATION:			
AGENDA ITEM 1- Approval of the Minutes Shelley Dunbar moved the Open Space Board of Trustees to approve the minutes from Feb. 18, 2015 as amended. Frances Hartogh seconded. This motion passed unanimously.			
AGENDA ITEM 2- Public Participation Joel Koenig, Boulder, expressed his thanks to the Volunteer Services workgroup. He has enjoyed his time as a volunteer and has truly appreciated the immense time put in by the Open Space and Mountain Parks (OSMP) Staff.			
AGENDA ITEM 3- Director's Updates Greg Seabloom, Trails Supervisor, gave a presentation on criteria for sustainable trail building.			
Annie McFarland, Visitor Access Coordinator, gave the Board a heads up that the western portion of Greenbelt Plateau Trail that connects to Highway 93 has temporarily been closed for safety reasons.			
Jim Reeder, Land and Visitor Services Division Manager, gave an update on various trail projects and their current status. He also reminded the Board that Staff is in the process of hiring seasonal employees.			

Steve Armstead, Environmental Planner, gave an update on the North Trail Study Area (TSA).

Tracy Winfree, Interim Director, gave an update on the supplemental appropriation to the 2015 Budget.

AGENDA ITEM 4- Matters from the Board

Shelley Dunbar read a proclamation for Tom Isaacson. The Board and staff expressed their thanks to Tom for his immense time spent on this Board. Tom reciprocated his thanks to staff, the Board and the public.

AGENDA ITEM 5 – Summary of 2014 Open Space and Mountain Parks Volunteer Services and Declaration to Honor Open Space and Mountain Parks Volunteers during National Volunteer Week, April 12-18, 2015.*

Jennelle Freeston, Coordinator of Volunteer Services, gave a presentation to the Board recognizing Open Space and Mountain Parks Volunteers during National Volunteer Week. .

Tom Isaacson read the following proclamation: The Open Space Board of Trustees joins the staff of the City of Boulder Open Space and Mountain Parks Department in recognizing all of our volunteers during National Volunteer Week 2015. We salute the more than 2,000 Open Space and Mountain Parks volunteers who contributed their talents and efforts in helping the department carry out its mission. These irreplaceable individuals are an inspiration as they help to protect the resources that make Boulder's Open Space and Mountain Parks so special.

AGENDA ITEM 6 – Consideration of a motion to modify an existing Open Space Board of Trustees approval of a conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Rd.*

Linda VanDervort, Conservation Easement Specialist, asked the Board to review a conservation easement amendment for the property owned by Graham Casden.

This spurred one motion:

Shelley Dunbar moved the Open Space Board of Trustees approve a modification of section 18.4 of the original OSBT approval of the conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Rd., as written in Attachment A. Molly Davis seconded. This motion passed unanimously.

AGENDA ITEM 7 – Consideration of a motion to approve the purchase of the Robert Oliver parcel consisting of 11.61 acres of land, all mineral rights and one share of Howard Ditch water located at 5893 Baseline Rd. from James C. Bish III for \$1,000,000 for Open Space and Mountain Parks purposes and an additional \$22,000 is recommended to be authorized from the acquisition budget for immediate needs for fencing, ditch culverts and irrigation infrastructure improvements.*

Jim Schmidt, Property Agent, gave a presentation on a possible acquisition.

This spurred one motion:

Frances Hartogh moved the Open Space Board of Trustees approve a motion recommending that the Boulder City Council approve the purchase of the Robert Oliver parcel consisting of 11.61 acres, all mineral rights and one share of Howard Ditch water located at 5893 Baseline Rd. for \$1,000,000 for Open Space and Mountain Parks purposes and recommended authorization of an additional \$22,000 from the acquisition budget for immediate needs for fencing, ditch culverts and irrigation infrastructure improvements. Shelley Dunbar seconded. This motion passed unanimously.

AGENDA ITEM 8 – Consideration of a motion to recommend granting a nonexclusive license for a mirror stand proposed to be temporarily placed on Valmont Butte by the National Institute of Standards and Technology for scientific purposes.*

Doug Newcomb, Property Agent, gave a presentation on granting a possible nonexclusive license to NIST for a temporary mirror stand.

This spurred one motion:

Shelley Dunbar moved the Open Space Board of Trustees recommend that the city manager enter into a nonexclusive license agreement with NIST subject to the terms and conditions that are substantially in the form as shown in Attachment A to this Memorandum. Kevin Bracy Knight seconded. This motion passed unanimously.

ADJOURNMENT: The meeting adjourned at 8:27 p.m.

ATTACH BRIEF DETAILS OF ANY PUBLIC COMMENTS:

None.

TIME AND LOCATION OF ANY FUTURE MEETINGS, COMMITTEES OR SPECIAL HEARINGS:

The next OSBT meeting will be April 8th at 6 p.m. at 1777 Broadway in the Council Chambers

CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
February 5, 2015
1777 Broadway, Council Chambers

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

Aaron Brockett, Chair
Bryan Bowen
Crystal Gray
John Gerstle
Leonard May
Liz Payton
John Putnam

PLANNING BOARD MEMBERS ABSENT:

STAFF PRESENT:

David Driskell, Director of CP&S
Susan Richstone, Deputy Director of CP&S
Charles Ferro, Development Review Manager for CP&S
Hella Pannewig, Assistant City Attorney
Susan Meissner, Administrative Assistant III
Sloane Wlabert, Planner I
David Thompson, Civil Engineer II- Transportation
Lesli Ellis, Director of Comprehensive Planning
Beth Roberts, Housing Planner
Molly Winter, DUHMD Executive Director
Karl Guiler, Senior Planner
Ruth McHeyser, Temporary Senior Planner
Ted Harberg, Comprehensive Planning Intern

1. CALL TO ORDER

Chair, **A. Brockett**, declared a quorum at 5:07 p.m. and the following business was conducted.

2. APPROVAL OF MINUTES

On a motion by **B. Bowen** and seconded by **L. Payton**, the Planning Board approved the December 18, 2014 Planning Board meeting minutes.

3. PUBLIC PARTICIPATION

No one from the public spoke.

DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS/ CONTINUATIONS

A. Call Up: Floodplain Development Permit (LUR2014-00101) 595 Aurora Avenue Breakaway Fence. Expires 02/06/2015.

B. Call Up: TEC2014-00033: Final plat to combine three separate parcels into one 2.9 acre building site at 1715 and 1725 28th Street for the Eads/Golden Buff redevelopment project approved per application # LUR2013-00066. Expires 02/05/2015.

C. Call Up: (Correction): USE REVIEW for a 3,509 square foot tavern located at 921 Pearl Street with an outdoor patio of no greater than 712 square feet in size, and closing no later than 2:00 a.m. (LUR2014-00081). Proposal will establish a 'tavern' with outdoor seating where there is currently a 'restaurant' with outdoor seating (Bacaro). Property is located in the DT-2 (Downtown 2) zone district. The call-up period expires on Feb. 17, 2015.

C. Gray called up item 4C.

- C. Gray asked if the emails sent to Planning Board requesting a call up of the Use Review were enough for it to be called up. Staff said they did not consider those emails to be worded correctly to constitute a call up. C. Gray said she would call it up on behalf of the residents.
- C. Gray expressed concern that only property owners, not tenants, were receiving public notices. She said that the public notice issue had been raised to Planning Board in relation to other projects around town.

On a motion by L. Payton, seconded by J. Gerstle, the Planning Board voted 6-1 (J. Putnam opposed) to request that public notices be sent to all residences, not only property owners, in the notification area.

- Staff currently uses a third party to send public notifications and will look into means for changing the procedure with that company.
- A. Brockett agreed that it did not make sense to prioritize property owners over tenants. For consistency, he would like to see this notification process extended to other projects as well.
- J. Putnam opposed the motion because he did not know the full consequences or why this should constitute a special case over other projects. He worried about getting ahead of code requirements.

5. PUBLIC HEARING ITEMS

A. **CONCEPT PLAN REVIEW AND COMMENT: Request for citizen, staff and Planning Board comment on a proposal to annex and redevelop the property located at 96 Arapahoe Ave. with a combination of single family, duplex and attached dwelling units. A total of nine dwelling units are**

proposed, consisting of six market rate units and three affordable units that would be developed upon annexation and establishment of an initial zoning of Residential Medium – 3 (RM-3), consistent with the Boulder Valley Comprehensive Plan (BVCP) land use designation of Medium Density Residential. Under Concept Plan review, no decision will be made by the Planning Board for approval or denial, rather the intent is to provide the applicant with feedback on the proposal.

Staff Presentation:

E. McLaughlin presented the item to the board.

Board Questions:

E. McLaughlin, D. Thompson and B. Roberts answered questions from the board.

Applicant Presentation:

Jonathan Warner, the applicant, presented to the board.

Public Hearing:

No one from the public spoke.

Board Comments:

- Board members agreed that the design is generally consistent with the BVCP and land use policies. It still needs some work with relation to the historic elements, the amount of proposed impervious circulation and parking area, and affordable housing.
- Members agreed with the request for a solar exemption; it has virtually no impact.
- Most members were comfortable with obscuring the view of the existing duplex. A. Brockett liked the views of the duplex and would prefer that the views, if obscured, be by trees as opposed to buildings.
- Most members did not have an opinion about the architectural style. L. Payton would prefer that be a bit more rustic and modest to fit with its context at the edge of the city. C. Gray requested non- reflective building materials.
- Preserve the historical features of the site as much as possible, namely the retention walls per preservation guidelines and the barn. Most members agreed that the barn could be moved slightly, but would prefer that it stay close to its current location.
- The board encouraged the applicant to either keep the existing road or to work with the adjacent property to share a driveway and access point. Both options would allow the barn location to be preserved and would greatly reduce the amount of paving on the site.
- Members generally thought that the amount of impervious surface area was excessive. Look for other means to accommodate vehicular access and parking. There is too much parking on the site.
- Board members encouraged the applicant to remove the hammerhead parking area; find another location for a fire truck turnaround.
- J. Gerstle suggested that the applicant consider contributing the area above the blue line to Open Space.

- **J. Putnam** cited some potential Open Space issues. He felt that a conservation, not just scenic, easement would be appropriate given the habitat conservation area behind it. Add a condition to the easement to make it difficult for residents to access the Open Space from that area.
- This will be a wildlife corridor. Consider thoughtful wildlife management strategies and vegetation so as to avoid creating problem bears. Comply with the defensible space recommendations.
- Board members agreed that the site plan currently lacks useable open space. Consider opportunities for common green space in the current hammerhead location.
- **B. Bowen** recommended revisions to the site plan to reduce impervious surfaces and to increase common open space area. Move the larger units toward the back of the property, attach the units and aggregate the parking adjacent to the buildings in the lower third of the site. This would provide space for a common green, maintain the same amount of development potential, preserve the historical buildings, eliminate significant amounts of hardscape, connect better with natural scene above, and create more community connections. It would be important to find a different way to calculate height if the board encouraged attached units.
- The board will need to see more community benefit in Site Review. The amount will depend on the size and scope of the project.
- Consider means for achieving energy savings and strive for near net-zero energy opportunities. This could be a good site for a ground source heat pump system.
- Improve the affordable housing options. There are currently large market-rate units and small affordable units. Make the unit sizes more commensurate.
- The board recommended that the applicant build more and smaller units. Affordability is of primary importance.
- **C. Gray** asked why onsite affordable housing was less than the 50% for the annexation.

B. Public Hearing and Consideration of Recommendations to City Council regarding the University Hill Commercial District moratorium project, including: 1. An ordinance amending the BMS zoning district standards to limit new residential uses within the University Hill Commercial District, except for permanently affordable units or housing for persons 62 years or older; and 2. Other strategies to consider further as part of the on-going Uni Hill Revitalization Strategy and the Community Planning and Sustainability Work Plan.

Staff Presentation:

R. McHeyser introduced the item.

K. Guiler presented the item to the board.

Board Questions:

R. McHeyser, K. Guiler and M. Winter answered questions from the board.

Matt Prosser, a consultant from Economic and Planning Systems, answered questions from the board.

Public Hearing:

1. **Rishi Raj, 863 14th Street**, a resident of Uni Hill since 1973, noted that the Hill is already a diverse place where groups work well together. The historic district would create a synergy. A performing arts or community center, similar to the Dairy Center, with underground parking could bring about change in the way residents and students interact.
2. **John Arndt, 1121 Broadway**, is a business owner and resident of the Hill. He sees more partying occurring in the residential area as opposed to the commercial district. Parking is the biggest deterrent to business on the Hill. He did not think that the proposals would reach the core issues.

Board Comments:

Part 1. An ordinance amending the BMS zoning district standards to limit new residential uses within the University Hill Commercial District, except for permanently affordable units or housing for persons 62 years or older.

- Board members generally supported the ordinance as drafted. They did not think that it was the final solution, but would serve as a good first step in making a change and would have minimal unintended consequences.
- Several members doubted whether seniors would choose to live on the Hill but felt it was harmless to leave it in the ordinance.
- **J. Putnam** questioned whether it made sense to prohibit, as opposed to discourage, uses.
- **C. Gray** thought it made sense to change the land use tables to encourage desired uses. Consider options for developing city-owned sites as well.
- **A. Brockett** was excited by the changes to the BMS zone and thought that they would also benefit Pearl Street and North Boulder.
- **B. Bowen** would prefer to keep all housing types as conditional but would support the ordinance as drafted.

Motion:

On a motion by J. Putnam, seconded by C. Gray, the Planning Board voted 7-0 to recommend that City Council adopt an ordinance to revise the BMS zone district standards for the Uni Hill commercial area to limit new residential uses, except for permanently affordable units or housing for persons 62 years or older.

Part 2. Other strategies to consider further as part of the on-going Uni Hill Revitalization Strategy and the Community Planning and Sustainability Work Plan.

- The board supported the idea of designating the Hill as a local historic district. Focus on outreach efforts to get community support.
- Consider tenants that would provide daytime and nighttime activities not involving alcohol and that would keep within the character of the Hill. Swallow Hill in Denver could provide a good example. The Harbeck House could also provide similar

opportunities.

- The board liked the idea of moving some city offices to the Hill.
- **L. May** felt that moving city offices to the Hill would be a viable way for the city to invest in the area. He was skeptical about using public funds to create financial incentives for private enterprise in the absence of economic analysis to assure that the investment would be returned.
- A possible Public-Private Partnership between the Grandview Conference Center and city parking lot to the north could provide an enormous catalyst for the area.
- Clarify the information about financial incentives and tax credits.
- Holistically integrate desired programmatic elements; an anchor tenant like the Grandview Conference Center, bike lanes, pedestrian interest, transit, scale, and façade improvement should be considered early in the process.
- **J. Putnam** suggested utilizing a design competition and creative partnerships to incentivize desired uses on the Hill. He liked the idea of an event street that engages different groups and pulls people from different parts of town; something like Ciclovía could achieve this aim.

5. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

- Staff asked board members to notify **S. Meissner** if they were interested in attending the 2015 APA Conference
- **L. May** and **C. Gray** volunteered to serve on the Housing Process Committee.
- Staff will interview consultants for Form Based Code on February 20th from 12 – 4pm. **L. Payton** volunteered to attend.

6. DEBRIEF MEETING/CALENDAR CHECK

7. ADJOURNMENT

The Planning Board adjourned the meeting at 9:52 p.m.

APPROVED BY



Board Chair

3/19/15

DATE

**CITY OF BOULDER
BOULDER, COLORADO
BOARDS AND COMMISSIONS MEETING
MINUTES**

Name of Board/ Commission: Transportation Advisory Board excel	
Date of Meeting: 12 January 2015	
Contact Information Preparing Summary: Rene Lopez 303.441.3208	
Board Members Present: Daniel Stellar, Jessica Yates, Dom Nozzi, Andria Bilich, Zane Selvans Board Members Absent: None	
Staff Present: Michael Gardner-Sweeney, Acting Director of Public Works for Transportation Kathleen Bracke, GO Boulder Manager Randall Rutsch, Sr. Trans Planner, GO Boulder Bill Cowern, Traffic Operation Engineer Rene Lopez, Board Secretary	
Consultants Present: None	
Type of Meeting: Advisory/ Regular	
Agenda Item 1: Call to Order	[6:00 p.m.]
The meeting was called to order at 6:00 p.m.	
Agenda Item 2: Approval of minutes from 10 November 2014	[6:01p.m.]
Motion to approve the meeting minutes from 10 November 2014 TAB meeting as presented: Motion by: Bilich, Seconded by: Selvans Vote: 5:0 Approval of minutes from 08 December 2014 Motion to approve the meeting minutes from 08 December 2014 TAB meeting as presented: Motion by: Selvans, Seconded by: Stellar Vote: 5:0	
Agenda Item 3: Public Participation	[6:01 p.m.]
Agenda Item 4: Staff briefing and TAB input regarding Envision East Arapahoe corridor plan	[6:02 p.m.]
Randall Rutsch presented this item. A PowerPoint was presented for this item.	
Executive Summary from Packet Materials: The purpose of this agenda item is to provide a briefing to the Transportation Advisory Board (TAB) on the status of the Envision East Arapahoe corridor transportation analysis, to obtain TAB's input to develop materials for the upcoming community outreach process in February, and the City Council Study Session scheduled for February 24, 2015.	
Board discussion and comments included:	[6:05 p.m.]
<ul style="list-style-type: none"> • Comments that there is very little change for western part of corridor, and that area would most benefit from changes. • Comments about supporting the repurposing of lanes and limiting parking spaces • Objections to widening of the road • Comments requesting graphical representations of numbers, tables and charts would be appreciated. • Comments regarding the study being arbitrary to end at 65th street. • Comments regarding zero waste recycle row goals potentially conflicting with the goals of this project. • Communication back to planning that this project is insufficient • Requests seeing BRT examples in graphical forms for the study, sell the BRT • Comments regarding the hospital and medical offices; potential for future needs based on the relocation of the hospital • Comments suggesting to explore the no BRT option to galvanize public to the need for BRT 	
Public Hearing Comments:	

No board action beyond input is requested at this time.

Agenda Item 5: Staff briefing and TAB input regarding US 36 BRT service planning

[6:58 p.m.]

Kathleen Bracke presented this item.
No PowerPoint was presented for this item.

Executive Summary from Packet Materials:

The purpose of this agenda item is to brief the Transportation Advisory Board (TAB) on RTD's updated proposed service plan for US36 "Flatiron Flyer" Bus Rapid Transit (BRT) and the revised key messages for the Renewed Vision for Transit based upon the TAB discussion at the December 2014 board meeting. The key messages are intended to support the TAB with their public outreach to policy makers, stakeholders and community members.

Board discussion and comments included:

[7:08 p.m.]

- Remarks that the east Boulder service diminishment is a huge problem with the revised service plan
- Comments regarding that if no net positive changes are possible, what is the point of the BRT service?
- Questions regarding future increased levels of service, based on future service demand increases and land use changes
- Requests to push RTD to prepare other scenarios with optimized and increased service options
- Remarks that reorganizing talking points beneficial. Info graphics were also beneficial.
- Comments stating that the BRT is not schedule-less under this plan, as it was originally designed
- Lobbying to change the course of RTD's plan
- Comments regarding service capacity issues on several regional commuter lines between Denver/Boulder
- Other suggestions for an action plan for Board members:
 - Letter to Chuck Sisk of RTD to inform him of issues for the next meeting- Staff initiate letter process for edit / review by board
 - Speak to Matt Appelbaum- Jessica and Daniel
 - Daily camera editorial - Andria and Jessica
 - Reach out to Commissioner Jones - Andria

Public Hearing Comments:

No board action beyond input is requested at this time.

Agenda Item 6: Matters

[7:59 p.m.]

A.) Matters from the Board Included:

Bilich - Pearl Parkway Multi-way Blvd - Not plowed - follow up with business for plowing responsibilities
Selvans - University parking lanes with protected bike lanes - poorly parked cars prevents plowing on the bike lane

B.) Matters from staff/Non Agenda:

[8:10 p.m.]

- Channel 8 Boards and Commissions Pilot
 - Televis boards and commissions meetings, Planning Board and OSMP Board of Trustees currently piloted. Other boards can request televising 30 days in advance of meeting.
- Regional studies update (Sweeney/Bracke)
 - Civic Area plan joint board meeting on March 11th coming up
 - TIP status - Funding for both the Boulder Slough, and Capital maintenance on N Broadway for round 1, round 2 stage for the remaining 25% is underway. Underpass at 30th & Colorado and the "studies" projects - BRT on 119 by RTD and State Hwy 7 BRT by Boulder County and communities, and Regional BRT study outside of NAMS area are all possible for Round 2 TIP.
- AMPS Joint Board Meeting; January 21st 6-8pm at Shine, 2027 13th Street.

Agenda Item 7: Future Schedule Discussion:

[8:17 p.m.]

Agenda Item 8: Adjournment

[8:17 p.m.]

There being no further business to come before the board at this time, by motion regularly adopted, the meeting was adjourned at 8:17 p.m.

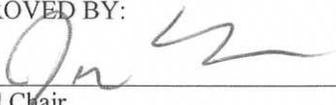
Motion: moved to adjourn; Selvans, seconded by: Yates

Motion passes 5:0

Date, Time, and Location of Next Meeting:

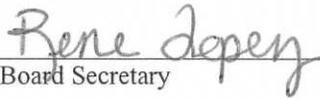
The next meeting will be a regular meeting on Monday, 09 February 2015 in the Council Chambers, 2nd floor of the Municipal Building, at 6 p.m.; unless otherwise decided by staff and the Board.

APPROVED BY:

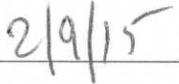


Board Chair

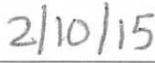
ATTESTED:



Board Secretary



Date



Date

An audio recording of the full meeting for which these minutes are a summary is available on the Transportation Advisory Board web page.

**IN APPRECIATION FOR
GORDON AND GRACE GAMM'S
DONATION AND SUPPORT OF THE ARTS**

WHEREAS, on December 12, 2014, it was announced that Gordon and Grace Gamm are supporting the arts in Boulder with a \$1 million gift to The Dairy Center for the Arts; and

WHEREAS, Gordon and Grace believe the arts play a critical role in the quality of life in our community; and

WHEREAS, both have been major supporters of a variety of arts organizations in Boulder and believe that Boulder can become as significant as an arts destination as it is an outdoors and health-conscious community; and

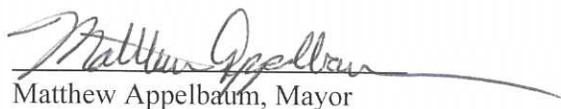
WHEREAS, both hope that The Dairy will become the coordinating hub for the arts in Boulder in order to maximize the quality of arts entertainment and education available here; and

WHEREAS, The Dairy already is home to over 200,000 arts experiences every year and provides music and dance studios for over 2,000 students; and

WHEREAS, Gordon and Grace believe exposure to the arts enhances the quality of our lives and contributes to the desirability of making Boulder home; enriches children's lives through exposure to excellent art and performance; fosters creative expression that results in new opportunities for understanding ourselves and our world; and benefits commercial enterprise by attracting employees who are seeking enriching communities for their families; and

WHEREAS their \$1 million gift to The Dairy confirms their belief in the vitality of the arts in Boulder and the opportunity Boulder has to become a model city for an excellent quality of life;

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 Gordon and Grace Gamm for their generous donation and support of the arts.


Matthew Appelbaum, Mayor

**ARBOR DAY
APRIL 17, 2015**

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday called Arbor Day was first observed with the planting of more than a million trees in Nebraska and Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

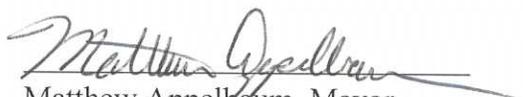
WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, Boulder has been recognized as a Tree City USA by The National Arbor Day Foundation for 31 consecutive years and desires to continue its commitment to community forestry;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that April 17, 2015 is

Arbor Day

and urge all citizens to celebrate Arbor Day and to support efforts to sustain our trees and woodlands. Further, all citizens are urged to plant trees to brighten the spirit and promote the well-being of this and future generations.


Matthew Appelbaum, Mayor

BOULDER ARTS WEEK

March 27 – April 4, 2015

WHEREAS, Boulder Arts Week represents the city's only large-scale, inclusive celebration of our community's vibrant arts and cultural offerings and will include art walks, First Friday, exhibitions, performances, dance, music, theater, artist demonstrations, symposia and more; and

WHEREAS, Boulder Arts Week is going into its second year after a highly successful launch in 2014: 439 events and performances; nearly 115 artists and arts organizations (representing 750 total artists); and attendance estimates exceeded 14,000 at ticketed and non-ticketed (free to the public) events; and

WHEREAS, the Steering Committee (including The Dairy Center for the Arts, Boulder Museum of Contemporary Art, Boulder Bach Festival, CU Presents, Boulder County Arts Alliance; Downtown Boulder, Inc., and the Boulder Chamber) have pledged their in-kind support for Boulder Arts Week to ensure its success; and critical funding for Boulder Arts Week has been secured from the Boulder Arts Commission and the Boulder Convention and Visitors Bureau; and

WHEREAS, Boulder Arts Week will enhance visibility of the arts within the local community and raise awareness of Boulder's artistic innovation throughout the region, positioning the city as a premier arts destination. Participating artists and organizations will benefit from this widespread collaboration, enabling each to expand their audiences and engage more members of the community with their mission and programming; and

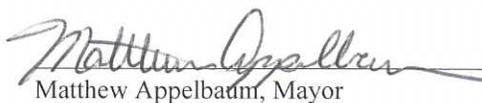
WHEREAS, decades of research demonstrate that high density of artists and arts organizations in cities lead to greater economic resilience, broader prosperity, increased cross-cultural appreciation, more social cohesion, higher civic engagement and academic and life success; and

WHEREAS, arts and culture play a key role in building and sustaining Boulder's economic vibrancy by stimulating creativity and innovation throughout the community, creating jobs, attracting new businesses, drawing tourism dollars and creating an environment that attracts skilled and educated workers; and

WHEREAS, the arts foster beauty, originality and vitality and benefit and connect all members of the Boulder community;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that March 27–April 4, 2015 is

Boulder Arts Week


Matthew Appelbaum, Mayor

**BOULDER HISTORIC PRESERVATION MONTH
MAY 2015**

WHEREAS, historic preservation is an effective tool for managing growth, revitalizing neighborhoods, fostering local pride and maintaining community character; and

WHEREAS, it is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life, and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping preserve the tangible aspects of our heritage that have shaped us as people; and

WHEREAS, "*History in the Making: Celebrating Youth in Preservation*" is the theme for Archaeology and Historic Preservation Month in Colorado for 2015, co-sponsored by the Boulder Heritage Roundtable;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that May 2015 is

Historic Preservation Month

and call upon the people of the City of Boulder to join their fellow citizens across the United States in recognizing and participating in this special observance.



Matthew Appelbaum, Mayor

**CHILD ABUSE PREVENTION MONTH
APRIL 2015**

WHEREAS, the citizens of Boulder recognize that children are our future; and

WHEREAS, children who are abused and neglected need intervention, support and advocacy; and

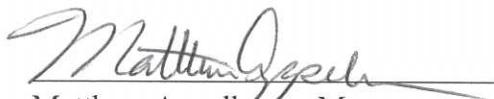
WHEREAS, Court-Appointed Special Advocates provide such support and advocacy while working to end the cycle of abuse; and

WHEREAS, child abuse prevention is everyone's responsibility;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that April 2015 is

Child Abuse Prevention Month

and invites all citizens in the community to acknowledge the importance of child abuse prevention now and year-round.


Matthew Appelbaum, Mayor

**“I HAVE A DREAM” FOUNDATION
25TH ANNIVERSARY
APRIL 8, 2015**

WHEREAS, the “I Have a Dream” Foundation of Boulder County was founded in 1990 to educate, empower and motivate low-income children to reach their education and career goals and provide them with a brighter future; and

WHEREAS, more than 16,000 low-income, at-risk youth in Boulder County are in need of comprehensive educational and enrichment programs such as “I Have a Dream”; and

WHEREAS, the “I Have a Dream” Foundation of Boulder County has reduced the high school drop-out rate and has created a clear pathway to and through higher education for low-income students in Boulder County; and

WHEREAS, to pledge that the “I Have a Dream” Foundation of Boulder County will continue to assist low-income youth in the future; and

WHEREAS, to celebrate twenty-five years of providing services to over 750 impoverished children and their families -- helping Dreamers become Achievers, one child at a time;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that April 8, 2015 is

**“I Have a Dream” Foundation’s
25th Anniversary**



Matthew Appelbaum, Mayor

**KIDS TO PARKS DAY
SATURDAY, MAY 16, 2015**

WHEREAS, May 16th, 2015 is the fifth Kids to Parks Day organized and launched by the National Park Trust; and

WHEREAS, Kids to Parks Day empowers kids and encourages families to get outdoors and visit America's parks; and

WHEREAS, it is important to introduce a new generation to our nation's parks because of the decline in park attendance over the last decades; and

WHEREAS, we should encourage children to lead a more active lifestyle to combat the issues of childhood obesity, diabetes mellitus, hypertension and hypercholesterolemia; and

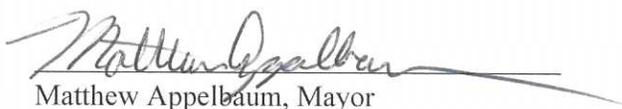
WHEREAS, Kids to Parks Day is open to all children and adults across the country to encourage a large and diverse group of participants; and

WHEREAS, Kids to Parks Day will broaden children's appreciation for nature and the outdoors;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that May 16, 2015 is declared

Kids to Parks Day

We urge the residents of Boulder to make time to take the children in their lives to a neighborhood, state or national park.


Matthew Appelbaum, Mayor

**Recognizing Narayan Shrestha and Troup Wood
2015 Volunteers of the Year**

WHEREAS, Narayan Shrestha, a local entrepreneur, has worked closely with the Lhasa sister city and Boulder-Jalapa Friendship Cities Project and lead a delegation of 20 dentists to Jalapa, working in 14 rural villages within the municipality; and

WHEREAS, Narayan participated in an October delegation to Lhasa, focused on commerce, tourism, health and education; and

WHEREAS, he was a valued speaker in Japan, visiting 22 cities May-September, on the topics of spirituality and natural/organic agriculture; and

WHEREAS, his model of bringing the development work on health and education from his native Nepal to Nicaragua, headquartered in Jalapa and has been able to attract other development organizations to venture and work in our sister city of Jalapa; and

WHEREAS, Troup Wood, a young film maker, traveled with Narayan to Nicaragua, Nepal and Bhutan, filming Narayan's projects and interviewing local people, beneficiaries and supporters of these projects; and

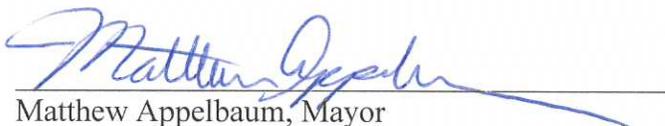
WHEREAS, Narayan and Troup, while in Lhasa, visited the Pasmata water system and documented the need and importance of access to clean water; and

WHEREAS, the combined efforts of Narayan and Troup resulted in a full length documentary that depicts Narayan Shrestha's development work across the globe as a major inspiration for small scale people-to-people connections between sister cities.

NOW, THEREFORE, BE IT DECLARED that the City Council of the City of Boulder, Colorado and the Boulder Sister City Alliance, hereby recognizes

Narayan Shrestha and Troup Wood

As the 2015 Volunteers of the Year for their dedicated service and for documenting the achievements of collaboration and partnerships around the globe that have deeply impacted and improved people's lives. We urge all citizens of Boulder to recognize and celebrate the programs and activities of the seven Boulder Sister City committees in the City of Boulder as exemplified by the volunteer service of their many committed members.


Matthew Appelbaum, Mayor



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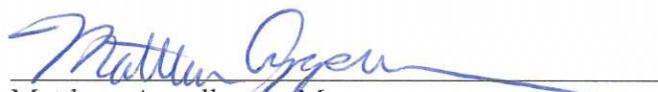
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Matthew Appelbaum, Mayor



STAND UP FOR TRANSPORTATION DAY
A National Transportation Infrastructure Day
April 9, 2015

WHEREAS, April 9, 2015 marks STAND UP FOR TRANSPORTATION DAY, a national transportation infrastructure day that highlights the critical need to invest in updating our nation's transportation infrastructure; and

WHEREAS, transportation is the economic backbone of our nation's economy and public transportation is an important part of our nation's transportation system, federal funding for public transportation infrastructure needs to increase and Congress needs to pass a long-term, multimodal transportation bill by May 31, 2015; and

WHEREAS, public transportation is a proven catalyst for economic growth since for every \$1 invested in public transportation, \$4 in economic returns is generated locally, creating economically vibrant and prosperous communities; and

WHEREAS, public transportation offers millions of Americans access to economic opportunities since nearly 60 percent of the trips taken on public transportation are for work commutes; and

WHEREAS, STAND UP FOR TRANSPORTATION DAY will be celebrated in small, medium and large communities across the United States, as a day that highlights the critical need for funding transportation infrastructure, both public transportation and highway infrastructure

NOW, THEREFORE, BE IT DECLARED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO that the City of Boulder will join with public transportation agencies and businesses across the country ON April 9, 2015 to participate in

STAND UP FOR TRANSPORTATION DAY

to encourage greater federal investment in public transportation infrastructure;

WHERE PUBLIC TRANSPORTATION GOES, COMMUNITY GROWS.


Matthew Appelbaum, Mayor



UnbelievaBubble Boulder Day
May 1, 2015

WHEREAS, the City of Boulder is sometimes referred to as the Boulder Bubble; and

WHEREAS, our Boulder Bubble is a vibrant creative city and an exceptional place to live, work and play; and

WHEREAS, UnbelievaBubble Boulder will be a fun, free event for people of all ages on the Pearl Street Mall that celebrates curiosity, imagination and innovation; and

WHEREAS, Assistant Professor David A. Brain, PhD, Laboratory for Atmospheric and Space Physics & Department of Astrophysical and Planetary Sciences, University of Colorado/Boulder – and member of the CU MAVEN Mars Mission Team, will be a guest speaker and talk about how curiosity sparks science; and

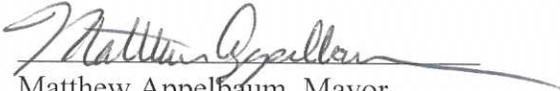
WHEREAS, UnbelievaBubble Boulder has been underwritten by the City of Boulder's Office of Arts & Culture; and

WHEREAS, there is value in bringing our community together to experience new ways of creatively engaging with our City;

NOW, THEREFORE, BE IT DECLARED by the City Council of the City of Boulder, Colorado, that May 1, 2015 is

UnbelievaBubble Boulder Day

and invites all Boulder residents to attend the inaugural UnbelievaBubble celebration on May 1, 2015, 4 PM, on the Pearl Street Mall near the Visitor's Information Kiosk at 13th Street.


Matthew Appelbaum, Mayor